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**PUNISHING APOSTASY:  
THE CASE OF ISLAM AND *SHARI'A* LAW RE-CONSIDERED**

by

**DECLAN PATRICK O'SULLIVAN**

In partial fulfilment of the requirement for the Degree of

**DOCTOR OF PHILOSOPHY**

**VOLUME I**

**Institute for Middle Eastern and Islamic Studies**  
معهد دراسات الشرق الاوسط و الدراسات الاسلامية

**Durham University**  
جامعة درم

2003

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1 2 MAR 2004





*iqra' bismi rabika*

**Read! In the Name of your Lord.....**

*Al-'Alaq, 96:1*

*Sureahs Prayer, Reinhold Niebuhr (1892 - 1971)*



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## **ABSTRACT.**

The aim of the thesis is to explore the hypothesis that there is a misunderstanding in Islamic theology and Islamic law by misinterpreting the concept of apostasy to be equal with treason. The thesis contends that the misguided belief in both acts being the same can be identified due to several reasons. The reasoning is based on certain confusion and ambiguity that can be identified in the definitions of the words that are used that relate to acts of disbelief in Islam. The vague boundaries between the definitions can provide no precise separation from one act to another, which can cause particular problems when dealing with punishing blasphemy and apostasy, especially with the death penalty.

The different forms of *Shari'ah* penalty systems will be analysed, in order to assess the most appropriate to include apostasy and blasphemy. Arguments are presented which promote and reject both these acts to remain in the *hudud* system. The act of treason it also included in the *hudud* system. In order to support the findings in how to categorise apostasy and blasphemy for the legal punishment, assessing *tafsir* of the Qur'an will determine whether the death penalty for apostasy is mentioned in any verse. An analysis of the circumstances that initiated the *hurub al-ridda* (Wars of Apostasy), will indicate that the confusion of not separating apostasy and treason resulted in the battle being incorrectly named. The concept of *takfir al-Muslim*, where 'one Muslim blames another of being an unbeliever' is prohibited in Islam. It will be discussed in relation to how it supports the need for tolerance of a person's religious belief, especially when the words used in the accusations are misconstrued, when they can actually be referring to a very different act.

In order to highlight how the basis of accusations of blasphemy and apostasy can be emphasised as being far more political than based on Islamic theology, particularly when the accusation involves the demand for a death penalty, the case studies will assess how the *Shari'ah* court system can be neutrally used and also abused. The cases covered include those of Mahmoud Muhamad Taha, executed as an apostate in 1985, two recent cases in Egypt misusing the law of *hisba*, and several other cases in Egypt from 1990 to 2001. There will also be an appraisal of the case involving the death penalty on Salman Rushdie, that was delivered *in absentia*.

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## **DECLARATION**

I, Declan Patrick O'Sullivan, the author of this PhD thesis, declare that none of the work provided in it has been submitted to gain another degree or qualification either in this University or any other academic or non-academic organisation.

## **DEDICATION.**

The Dedication of this PhD thesis is the least I can offer to my brother, Dr. Finbarr O'Sullivan and his wife Jo, who so willingly provided me the chance to seek and achieve this goal. They still insisted to fund this research and encourage its progress, even after witnessing that I could not even write a post-card and be understood. That factor did not matter to them, as the act for me to participate was far more important and satisfying enough for them both. Their endless commitment, trust and unquestionable generosity enabled me to play the Healing Game, and everything that it involves. To offer my Thanks, then the words of Kahlil Gibran in his poem *The Prophet*, state what they both did for me in a far better way than I can ever express it: "*They give as in yonder valley the myrtle breathes its fragrance into space*" .....

### **'On Giving'**

Then said a rich man, 'Speak to us of Giving' and he answered :

"You give but little when you give of your possessions, it is when you give of yourself that you truly give. For what are your possessions but things you keep and guard for fear you may need them tomorrow?

And tomorrow, what shall tomorrow bring to the over prudent dog burying bones in the trackless sand as he follows the pilgrims to the holy city?

And what is fear of need but need itself? Is not dread of thirst when your well is full, the thirst that is unquenchable?

There are those who give little of the much which they have – and they give it for recognition and their hidden desire makes their gifts unwholesome.

And there are those who have little and give it all. These are the believers in Life and the bounty of Life, and their coffer is never empty.

There are those who give with joy, and that joy is their reward. And there are those who give with pain, and that pain is their baptism.

And there are those who give and know not pain in giving, nor do they seek joy, nor give with mindfulness of virtue; They give as in yonder valley the myrtle breathes its fragrance into space.

Through the hands of such as these God speaks, and from behind their eyes He smiles upon the earth.

*Dedication*

It is well to give when asked, but it is better to give unasked, through understanding; And to the open-handed the search for one who shall receive is joy greater than giving. And is there aught you would withhold? All you have shall some day be given; Therefore give now, that the season of giving may be yours and not your inheritors.

You often say 'I would give, but only to the deserving.' The trees in your orchard say not so, nor the flocks in your pasture. They give that they may live, for to withhold is to perish.

Surely he who is worthy to receive his days and his nights, is worthy of all else from you. And he who has deserved to drink from the ocean of Life, deserves to fill his cup from your little stream.

And what desert greater shall there be, than that which lies in the courage and the confidence, nay the charity, of receiving? And who are you that men should rend their bosom and unveil their pride, that you may see their worth naked and their pride unabashed?

See first that you yourself deserve to be a giver, and an instrument of giving. For in truth, it is Life that gives unto Life – while you, who deem yourself a giver, are but a witness.

And you receivers – and you are all receivers – assume no weight of gratitude, lest you lay a yoke upon yourself and upon him who gives.

Rather, rise together with the giver on his gifts as on wings; For to be overmindful of your debt, is to doubt his generosity who has the free-hearted earth for Mother and God for Father.

\*\*\*\*\*

Kahlil Gibran, (1883-1931)  
*The Prophet*  
Mount Lebanon, 1923.



W.B.Yeats

## The Stolen Child

Where dips the rocky highland  
Of Sleuth Wood in the lake,  
There lies a leafy island  
Where flapping herons wake  
The drowsy water-rats;  
There we've hid our faery vats,  
Full of berries  
And of reddest stolen cherries  
*Come away, O human child!*  
*To the waters and the wild*  
*With a faery, hand in hand,*  
*For the world's more full of weeping*  
*than you can understand*

Where the wave of moonlight glosses  
The dim grey sands with light,  
Far off by furthest Rosses  
We foot it all the night,  
Weaving olden dances,  
Mingling hands and mingling glances  
Till the moon has taken flight;  
To and fro we leap  
And chase the frothy bubbles,  
While the world is full of troubles  
And is anxious in its sleep  
*Come away, O human child!*  
*To the waters and the wild*  
*With a faery, hand in hand,*  
*For the world's more full of weeping*  
*than you can understand*

Where the wandering water gushes  
From the hills above Glen-Car,  
In pools among the rushes  
That scarce could bathe a star,  
We seek for slumbering trout  
And whispering in their ears  
Give them unquiet dreams;  
Leaning softly out  
From ferns that drop their tears  
Over the young streams.  
*Come away, O human child!*  
*To the waters and the wild*  
*With a faery, hand in hand,*  
*For the world's more full of weeping*  
*than you can understand*

Away with us he's going,  
The solemn-eyed;  
He'll hear no more the lowing  
Of the calves of the warm hillside  
Or the cattle on the hob  
Sing peace in his breast,  
Or see the brown mice bob  
Round and round the oatmeal-chest.

*For he comes, the human child,  
To the waters and the wild  
With a faery, hand in hand,  
From a world more full of weeping  
than he can understand.*

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you followed that with Patrick and Matthew, your own little twins. These are the very reasons why I am happy to wake up and enjoy a beautiful new day. Every day.

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Although expressive dysphasia is all mine, I still admit that there can be no cheap excuse and no other person to blame – but me – for any errors or misinformation found in this thesis. Any fault lies with the author. So, please read on.....



American Library Association (ALA) Arabic-English Transliteration Table.

Arabic

Letters of the Alphabet

Initial	Medial	Final	Alone	Romanization
ا	ل	ل	ا	omit (see Note 1)
ب	ب	ب	ب	b
ت	ت	ت	ت	t
ث	ث	ث	ث	th
ج	ج	ج	ج	j
ح	ح	ح	ح	h
خ	خ	خ	خ	kh
د	د	د	د	d
ذ	ذ	ذ	ذ	dh
ر	ر	ر	ر	r
ز	ز	ز	ز	z
س	س	س	س	s
ش	ش	ش	ش	sh
ص	ص	ص	ص	ṣ
ض	ض	ض	ض	ḍ
ط	ط	ط	ط	ṭ
ظ	ظ	ظ	ظ	ẓ
ع	ع	ع	ع	‘ (ayn)
غ	غ	غ	غ	gh
ف	ف	ف	ف	f (see Note 2)
ق	ق	ق	ق	q (see Note 2)
ك	ك	ك	ك	k
ل	ل	ل	ل	l
م	م	م	م	m
ن	ن	ن	ن	n
ه	ه	ه , ة	ه , ة	h (see Note 3)
و	و	و	و	w
ي	ي	ي	ي	y

Vowels and Diphthongs

ā	a	ā (see Rule 5)	ī
ū	u	ā (see Rule 6(a))	aw
ī	i	ū	ay



Letters Representing Non-Arabic Consonants

This list is not exhaustive. It should be noted that a letter in this group may have more than one phonetic value, depending on the country or area where it is used, and that the romanization will vary accordingly.

گ	g	چ	ch	ق	v
ڭ	g	ج	zh	ڤ	v
پ	p	ژ	zh	پ	v

Notes

- 1. For the use of *alif* to support *hamzah*, see rule 2. For the romanization of *hamzah* by the consonantal sign ' (alif) see rule 8(a). For other orthographic uses of *alif* see rules 3-5.
- 2. The *Maghribi* variations ب and ق are romanized *f* and *q* respectively.
- 3. ة in a word in the construct state is romanized *t*. See rule 7(b).

RULES OF APPLICATION

Arabic Letters Romanized in Different Ways Depending on Their Context

- 1. As indicated in the table, و and ي may represent:
  - (a) The consonants romanized *w* and *y*, respectively

waḍ'	وضع
'iwaḍ	عوض
dalw	دلو
yad	يد
ḥiyal	حیل
ṭahy	طهي

- (b) The long vowels romanized *ū*, *ī*, and *ā* respectively

ūlā	اولی
ṣūrah	صورة
dhū	ذو
īmān	ایمان
jīl	جیل
fī	فی
kitāb	کتاب
saḥāb	سحاب
jumān	جمان

See also rules 11(a) and 11(b1-2).



## **RESEARCH METHODOLOGY**

### **A.0 Introduction: Qualitative Methodology.**

#### **A.1 Ethics and Morals in Research.**

The research of this thesis covers the assessment of the *tafsir* (exegesis) of the Qur'an and the analysis of certain decisions made by Islamic scholars and jurists on the specific sentence that is related to the act of apostasy from Islam and the act of blasphemy against Islam, the Prophet Muhammad and/or the Qur'an. Based on this outline of the research topic, then it becomes obvious that the concepts of ethics and morals have to be kept in mind by anyone researching this topic. However, although the research topic covers a rather sensitive area of *Shari'ah* (Islamic Law) and Islamic Theology *per se*, it is also important to be aware before beginning such research, that there already exist various complexities that are involved in the very definition of 'ethics' and 'morals' in the field of research methodology. As Kimmel suggests:

Although various attempts have been made to distinguish the characterisations of ethical problems in various types of applied research, such as social experiments, evaluation research, social intervention, and prevention research, consensus appears to be lacking among social researchers as to what actually constitutes an ethical or moral issue in their investigations. A common confusion apparently involves the distinction between 'ethical' problems and 'moral' problems, and the point at which either constitutes a research 'diversity'. The sheer diversity of ethical problems that one might encounter during the various stages of social research seems to have precluded the emergence of a clear typology or set of classifying characteristics by which to describe and contrast particular studies.<sup>1</sup>

Kimmel defines the two terms to indicate where they derive from.<sup>2</sup> It is useful for the researcher of this thesis to use this terminology in order to justify the legitimate reasons and academic acceptance for a non-Muslim, who is also not completely fluent in Arabic, to engage in the assessment of *tafsir* (exegesis) of the Qur'an and to interpret the source of the specific *Shari'ah* sentencing, which this doctorate research requires. As Kimmel suggests, it is important for any researcher to defend their

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<sup>1</sup> Kimmel, Allan J., *Ethics and Values in Applied Social Research*, Sage Publications, London, p26

<sup>2</sup> " 'Ethics' and 'morality' have similarly developed from terms that pertain to customary or usual practice. The word *ethics* is derived from the Greek *ethos*, meaning a person's character, nature, or disposition. It is defined in the *Oxford English Dictionary* (1933) as 'relating to morals' (Vol.3, p.312) or, more specifically, 'of or pertaining to the distinction between right and wrong or good or evil, in relation to actions, volitions, or character of responsible beings' (Vol.6, p.653). The synonym *morality*



research that is being undertaken by an 'outsider' from the area researched. Essentially then:

.....while the terms ethical and moral both pertain to morality, they are not to be confused with morally right and morally good. A moral judgement thus is one that involves a matter of right or wrong, ought or ought not, a good action or a bad one. Whenever the question 'Should I conduct this study?' is raised in social research, a moral issue is at stake.

Ethical problems are in fact moral problems, even though some people choose to use these terms as if a difference existed. In contrast to moral concerns, which question whether specific acts are consistent with accepted notions of right or wrong, the term *ethical* is used to connote rules of behaviour or conformity to a code or set of principles.<sup>3</sup>

The research was undertaken by meeting the code of principles where a fair, objective analysis was implemented in the assessment of the various texts used, and the conclusions reached in this thesis were considered to be a direct finding of the information in the text. It can also be argued that the research was undertaken without any bias and the methods used were not over-emphasised with any pre-determined beliefs or pre-set ideas of what the research would lead to. Although the terms 'objective' and 'subjective' can be debated, it is still possible to determine the manner in which the research was undertaken, from the beginning and entirely throughout its course, and be able to prove that the researcher undertook the project as a neutral observer, as opposed to a researcher wishing to meet a specific, pre-determined agenda.<sup>4</sup> The code of principles were maintained throughout the research of this thesis.

## **A.2 Code of principles in Qualitative Methodology.**

A brief summary of the basic principles used in qualitative methodology is a useful guide to present the boundaries that were established and maintained during the research of the thesis. The main issues that needed to be incorporated into the research methodology included:

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is derived from the Latin *moralis*, meaning custom, manners, or character. In essence, both ethics and morality refer to usual or normal behaviour." Kimmel, *ibid.*, p27

<sup>3</sup> Kimmel, *ibid.*, p27

<sup>4</sup> More information on this area of methodology can be found in Lonner, Walter J., and Berry, John W., (Eds), *Field Methods in Cross-Cultural Research*, Vol.8, Cross-Cultural Research and Methodology Series, Sage Publications, London, 1986.



- 1) *Openness* – Qualitative research is not pre-determined or pre-structured by hypotheses and procedures that might limit its focus scope or operation.
- 2) *Reflexivity of object and analysis* – In qualitative research every symbol or meaning is considered to be a reflexion (*sic*) of the context in which they were developed. A symbol is an *index* of an embracing regulated context ('indexicality'). The meaning of an object of expression is understood through a reference to its symbolic or social context.
- 3) *Flexibility* – Qualitative methods are flexible in many ways, for example with regard to the choice of research instruments, and research procedures. Research is not rigidly set but rather flexible and can change during its execution. Guidelines rather than strict rules are more likely in qualitative research. 4) – 5) – 6) –
- 4) *The process–nature of the research and the object* – Reality, according to this form of research, is created and explained in interaction. In this process, reality is constructed, managed, explained and presented. The purpose of social research is, therefore, to identify the process of reality construction and the construction of patterns of meanings and actions.<sup>5</sup>

### **A.3 Different Types of Methodology.**

There is a vast array of different forms of research methods that are used by social scientists. As Sarantakos explains:

The diverse perception of methodology.....has been expressed in many ways in practice. Several research models have been introduced and practised by many social researchers, some being unique.<sup>6</sup>

The complete list of the full range of these diverse practices in the field of social science methodology is far too broad to be included here, so a concise list of reference will present the main types of methods used and a brief description of the areas of work they would be best suited for. Sarantakos suggests that 'Quantitative research' mainly focuses on statistical analysis, concentrating on data and figures that are acquired as part of the research. The methods of 'Basic research' can deal with either rejecting or supporting theories that already exist concerning the social world. 'Applied research' is directly related to social issues and policy issues, and aim at trying to solve a specific problem, with the possibility of establishing a policy programme to achieve the research goal. 'Longitudinal research' would involve a long time span in-between assessing and reassessing the participants in the research

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<sup>5</sup> Sarantakos, Sotirios, *Social Research*, The MacMillan Press Ltd., London, 1994, p49-50

<sup>6</sup> Sarantakos, *ibid.*, p6

sample. There is 'Descriptive research', which is often used as either a preliminary or exploratory study and for an independent investigation on a topic, in order to establish some solid background information as a decent basis for further research.

Other methods include 'Classification research' that is used in order to determine definite categories for certain research units, which can then be used to demonstrate the demarcation of the differences that exist between the set units. 'Comparative research' is similar to 'Classification', as it enables the researchers to identify both the similarities and/or differences between the research units in the areas of possibly a historical or cultural perspective. 'Exploratory research' is rather similar to 'Descriptive research', as it is usually used when there is not enough information available concerning the research subject. It can be undertaken to form the basis for further more detailed research on the same/similar topic. Other methods include 'Casual research', which is used to determine the causes of social phenomena and the inevitable consequences. It correlates variables to prove that one will cause the other, and to ensure that if one variable occurs, then it will lead to the other.

Certain methods deal with theories, as 'Theory-testing research' aims to test the validity of a given theory and requires the use of other methods of research to finally reach the conclusion. Also, 'Theory-building research' formulates one theory practice by being based from the results of another. Data is collected to provide the evidence which will support the theory. 'Participatory action research (PAR)' involves people from organisations or communities taking part in the research programme.<sup>7</sup>

The last, and most appropriate method for this specific doctoral research, is the methodology of 'Qualitative research.' In the explanation that Sarantakos provides in describing what this method includes, it clearly presents the relevance of how this particular form of research method, and its branches of phenomenology and hermeneutics, directly relate to the topic that this thesis approaches:

*Qualitative research:* This type of research refers to a number of methodological approaches, based on diverse theoretical principles (e.g. phenomenology, hermeneutics and social interactionism) employing methods of data collection and analysis that are non-quantitative, and aiming towards exploration of social relations, and describes reality as

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<sup>7</sup> Sarantakos, *ibid.*, p6-7.



experienced by the respondents.....for instance, see in qualitative research: 1) exploration, which helps to analyse research objects, identify indicators, and establish classifications and typologies; 2) discovery of relationships between variables, enabling comparisons and conclusions to be made about the significance of certain factors for the relationship; 3) establishing integrated constructs; and 4) testing hypotheses.<sup>8</sup>

The methods of phenomenology and hermeneutics will be discussed in detail, to highlight their relevance, but before those methods are described and assessed, an interesting point can be raised from this concise list of research methodology just provided. It is clear that no research project can be fully operated by solely using just one of the separate forms of research methods mentioned above. A combination of several methods is very likely to be the case, because on most occasions it would be essential to combine methods in order to cover the multi-disciplinary nature of the specific research topic in question. Sarantakos indicates this point, by stating:

These types of social research are not mutually exclusive. Researchers usually employ more than one type of research in a project. It is, for instance, possible that descriptive research is used in an investigation together with classification research, theory-building research and comparative research. The investigator has to decide about the types and combinations of research forms that, in his or her opinion, best serve the goals of the study.<sup>9</sup>

#### **A.4 Hermeneutics**

For a clearer understanding of this form of study and research, the basic definition of the function and procedure of hermeneutics will present why it is an essential form of methodology that directly relates to the process of assessing the *tafsir* (exegesis) of the Qur'an and hadith:

Hermeneutics is a special technique based on text interpretation. In its original (Greek) meaning it denotes the art of translating and constitutes an approach to texts and fixed expressions of human life with the purpose of understanding and interpreting them as well as their creators. The central point of this research is *verstehen*, that is, understanding, and its original sociological meaning comes from Max Weber.....Such *verstehen* can be 'psychological verstehen' (especially with regard to emphatic understanding); 'meaning verstehen' (*sinn-verstehen*), directed towards the meaning; 'elementary verstehen' and 'higher verstehen'.

In the context of hermeneutics, understanding becomes a very complex process, leading researchers and theorists to various levels of human life,

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<sup>8</sup> Sarantakos, *ibid.*, p6-7.

<sup>9</sup> Sarantakos, *ibid.*, p8

and it takes various forms, an explanation of which is beyond the scope of this book. (i.e. beyond the scope of this PhD thesis). Nevertheless, its emphasis on understanding people as well as on interpreting objects and actions and the emphasis on meanings are elements that have proved to be very useful for interpretive social science and for qualitative methodology.<sup>10</sup>

In reference to the methodology of researching the history of philosophy and theology and, in the given context of this doctoral research – which specifically covers both historical and more contemporary Islamic philosophy and Islamic theology – a rather pertinent point is raised by Gerald Bruns, who refers to the work of Hegel and presents Hegel's appraisal of the 'correct' methods of how to research these precise topics:

Hegel gives the example of 'a teacher of the history of philosophy [who] is supposed not to be partisan. This demand for neutrality has generally no other meaning but that such a teacher is to act in expounding the philosophies as if he were dead, that he is to treat them as something cut off from his spirit, as something external to him, and that he is to busy himself with them in a thoughtless way.....But if we are to study the history of philosophy in a worthwhile way.....we must.....not restrict ourselves to, or content ourselves with, merely knowing the thinking of other people. Truth is only known when we are present in it with our own spirit; mere knowledge of it is no proof that we are really at home in it'.<sup>11</sup>

Another relevant quote from Hegel is presented with specific reference to the process of studying the history of religion and, more importantly, religious text. These forms of research will obviously include the methodology of phenomenology and – most certainly, concerning religious texts – the methods of exegesis and hermeneutics. As Bruns states, by quoting Hegel again, by following on from Hegel's position on studying the history of philosophy:

Hegel takes the same approach to the history of religion and to the Scriptures in particular. In his lectures of 1824 on the philosophy of religion he says that:

there is a type of theology that wants to adopt only a historical attitude toward religion; it even has an abundance of cognition, though only of a historical kind. This cognition is no concern of ours, for if the cognition of religion were merely historical, we would have to compare such theologians with countinghouse clerks, who keep the ledgers and accounts of other people's wealth, a wealth that passes through their hands without their retaining any of it, clerks who act

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<sup>10</sup> Sarantakos, *ibid.*, p48

<sup>11</sup> Bruns, Gerald, L., *Hermeneutics: Ancient and Modern*, Yale University Press, New Haven, 1992, p150



only for others without acquiring assets of their own. They do of course receive a salary, but their merit lies only in keeping records of the assets of other people. In philosophy and religion, however, the essential thing is that one's own spirit itself should recognise a possession and content [*einen Besitz und Inhalt*], deem itself worthy of cognition, and not keep itself humbly outside.<sup>12</sup>

### A.5 Phenomenology.

One very important point of the research methodology entitled phenomenology correlates rather well to the *Reflexivity of object and analysis* as mentioned above in the 'code of principles'. This connection indicates the reasons why it was important to use this method and the relevance this form of methodology has in the research topic this thesis covers. As can be seen, phenomenology is also very closely tied in with the methodological approach of hermeneutics, due to the similar use of *verstehen*, (the emphatic understanding), as was previously mentioned in the definition of hermeneutics:

In fact, the symbolic interactionists and the ethnomethodologists are currently the most vigorous supporters of qualitative methodology. The phenomenologist views human behaviour – what people say and do – as a product of how people interpret their world. The task of the phenomenologist, and, for us, the qualitative methodologists, is to capture this *process* of interpretation. To do this is what Weber called *verstehen*, emphatic understanding or an ability to reproduce in one's mind the feelings, motives, and thoughts behind the actions of others. In order to grasp the meanings of a person's behaviour, *the phenomenologist attempts to see things from that person's point of view*.<sup>13</sup> (Italics from original quote).

This very point is also raised by other researchers when assessing the 'quality and quantity' of social research methodological approaches. As Alan Bryman states:

The metaphorical, or in any event loose, depiction of styles of research and thinking as 'phenomenological' can be discerned in the writings of various proponents of qualitative research. 'Phenomenology' often seems to denote little more than a commitment to attending to actors' points of view and the meanings they attribute to their behaviour.<sup>14</sup>

Bryman then proceeds to quote the same quote that was presented above, to emphasise that phenomenology can be accepted and understood: "as a product of how

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<sup>12</sup> Bruns, *ibid.*, p150

<sup>13</sup> Bogdan, Robert, and Taylor, Steven, J., *Introduction to Qualitative Research Methods: A Phenomenological Approach to the Social Sciences*, John Wiley & Sons, New York, 1975, p13-14

<sup>14</sup> Bryman, Alan, *Quantity and Quality in Social Research*, Contemporary Social Research: 18, Series Editor Martin Bulmer, Routledge, London, 1996, p53

people interpret their world..... *the phenomenologist attempts to see things from that person's point of view.*"<sup>15</sup>

## **B.0 Main Objective of the Thesis: Research Questions Raised.**

The aim of the thesis is to determine whether the conviction – and, in some cases, the execution – of those who were sentenced in court for apostasy and/or blasphemy, can be argued to be a legitimate implementation of the relevant *shari'ah*. It also aims to establish whether it is possible to prove that there has been a potential misuse of *shari'ah* and a possible incorrect use of the Qur'anic *tafsir* to defend these legal sentences. The research topic also raises the question of whether it would be more acceptable to include both apostasy and blasphemy in the category of punishment by *ta'zir* in Islamic jurisprudence, where the judge would make an independent decision on each individual case, using their own discretion based on the separate circumstances surrounding each case. This argument endeavours to promote the removal of each act of apostasy and blasphemy from the category of *al-hudud*, which are the crimes and punishments that are stated in the Qur'an. The main aim of the research project is to prove that the death penalty for apostasy cannot be found in any verse of the Qur'an, and therefore it can be stated to be a human political decision, and, therefore, it is clearly not a revealed message from God.

## **B.1 The Choice of Methodology in this Thesis.**

The research of this thesis was conducted through the process of qualitative methodology, and specifically combining the methods of phenomenology and hermeneutics. As can be seen above in the definitions and specific procedures that these two types of methodology operate under, they were considered to be the most appropriate methods in order to assess the theoretical concepts on the punishment for blasphemy and apostasy in Islam, as presented in the literature on Islamic law (*shari'ah*) and the *tafsir* (exegesis) of the Qur'an. In order to confirm whether the hypothesis of the thesis was valid, the second part of the thesis included certain levels of 'field-work' methods of research, by assessing both historical and contemporary court cases that involved Muslims who had either been convicted or accused of either blasphemy and/or apostasy against Islam. The term 'field-work' is used here in a loose-way, and makes reference to the fact that two court cases occurred in Egypt

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<sup>15</sup> Bryman, *ibid*, p53



during the period the actual research project was being undertaken. These cases were followed very closely, and there could not have been any better source of up-to-date information, other than these cases which occurred simultaneously while assessing the exact legal sentences and theological references they related to.

To justify the use of qualitative methodology, it would be useful to explain the reasons for its relevance in this particular research. A research project requires a specific hypothesis, as a definite point to start from, and this is the theory behind the research undertaken, in order to discover whether the suggested theory is true or whether it cannot be established or proven to be valid. As stated by David Silverman:

.....without a theory, there is nothing to research. In social research, examples of such theories are *functionalism* (which looks at the functions of social institutions), *behaviourism* (which defines all behaviour in terms of 'stimulus' and 'response') and *symbolic interactionism* (which focuses on how we attach symbolic meanings to interpersonal relations).<sup>16</sup>

It is also essential to keep the topic being researched tightly restrained within very strict boundaries, in order for the research results to gain a specific point of conclusion, as opposed to being a broad, very generalised opinion. Silverman argues that to limit what is actually researched is a vital tool for any area of inquiry:

For instance, it is important to find the causes of a social problem like homelessness, but such a problem is beyond the scope of a single researcher with limited time and resources. Moreover, by defining the problem so widely, one is usually unable to say anything in great depth about it.....[the] aim should be to say 'a lot about a little (problem)'.<sup>17</sup>

This point emphasises the view that it was far more beneficial for this particular research project to specifically focus on the *shari'ah* legal sentences on apostasy and blasphemy alone, rather than attempt a much broader analysis. For example, research comparing and contrasting *shari'ah* with Western legal systems or, perhaps, comparing and contrasting 'human rights in Islam' and 'human rights in non-Islamic states' are not appropriate, as these examples are not a specified area and would not be viable for the limited doctorate research. The topic this thesis focused on might initially seem to be a very narrow, but as the research developed there were many relevant and related factors that needed to be studied and analysed.

<sup>16</sup> Silverman, David, *Interpreting Qualitative Data: Methods for Analysing Talk, Text and Interaction*, Sage Publications, London, 1993, p1

<sup>17</sup> Silverman, Ibid., p3

Having established a hypothesis, qualitative methodology is used as an attempt to attain a definite answer for the theoretical question that initiated the research. It can be argued that this methodology proved to be the important structure of obtaining 'objective' results – as far as that is possible – and leading to the final conclusion of the entire project. In this particular study throughout the thesis various concepts that differ in the four Sunni schools of law are assessed and the structure used provides a system which tackles each argument provided by the legal schools and the exegetes of the Qur'anic text, with counter-points which the hypothesis proposes.

This arrangement of contrasting arguments with counter-arguments can be defended by the manner in which differing theories and concepts can be used to interact with each other in order to create a balanced academic framework, which will lead to a sound conclusion. Concerning this methodology of research, David Dooley states:

Theories are conceptual systems, that is, statements of the relationships among concepts.....The possibility that concepts are unrelated or are related in unexpected ways reminds us of the most important thing about theories – they are tentative and preliminary. We are not sure about them, and that is why we call them theories instead of laws or facts. Theories are preliminary to laws in that they are working models subject to change and improvement.<sup>18</sup>

## **B.2 Structure of the Thesis.**

The main framework of the research was set-up in order to defend the hypothesis of whether it could be acceptable to re-assess the *sharia'h* legal rulings on apostasy and blasphemy, and also whether there was any potential for re-considering the definitions of these acts and improving the relevant legal punishments. To elaborate on how this framework was structured, it is important to note the idea that progress occurs over time and if society changes, the laws regarding that society must also be open to progress and change. As the four Sunni school's of law hold different opinions of what the relevant punishment for men and for women apostates is, and also the time scale provided for the accused to repent, then these differences form a strong basis for this research project – theories and concepts can change, as they are not concrete, or

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<sup>18</sup> Dooley, David, *Social Research Methods*, Prentice-Hall Inc., Englewood Cliffs, New Jersey, USA, 1984, p29



unalterable facts. This is especially true if such inconsistency already exists in this particular area of *shari'ah*. Dooley also argues that:

Theories are like artists' sketches. They are not painted in oil or sculpted in marble on the first try. Rather, the artist makes a preliminary sketch in pencil or in clay. This sketch is frequently adjusted or fitted to the reality that the artist sees or remembers. In a sense, the sketch is tested against the visual reality repeatedly before the artist is ready to set it permanently in oil or marble.<sup>19</sup>

This last point relates to the method of how the definition of terms that relate to 'unbelief' in Islam have changed in meaning over time. The First Chapter covers each form of unbelief to present how, historically, the terms had referred to separate acts which are now acts that are included in a different definition of 'unbelief.' This fact highlights the certain levels of confusion and the potential for some ambiguity in how people can understand each act and each term now, by the change of definitions over time. As each form of unbelief holds a separate legal punishment, it becomes apparent why re-assessing this topic is an important reason to focus this doctorate research project on. The same offensive act in the past was defined and held a specific form of punishment, whereas the same act was later categorised with a different definition – and, therefore, became placed in a separate category which placed a different, and sometimes more severe, legal punishment on the offence committed.

This factor is also one main reason for using history as a relevant basis for introducing this topic of research. Historical views are essential, because if the thesis focused purely on contemporary understandings of *shari'ah*, and only referred to contemporary court cases, then this structure of the thesis would be too narrow, as it would not include the genealogy of legal terms and the slight change of the definitions for each act in the categories of 'unbelief'. Also, of great importance with the use of history in methodology, is the information found in the Fourth Chapter, which presents arguments and counter-arguments from both legal and theological perspectives, on the source of the death penalty for apostasy. Some academics argue that it is based on battles against rebellious tribes, following the death of the Prophet Muhammad, whereas these views are dismissed by others who argue that certain historical factors were behind the tribal rebellious campaign. Therefore, in using

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<sup>19</sup> Dooley, Ibid., p29

history and how it is interpreted is essential in understanding what occurs in the present day, especially if the historical fact include the change in law which is now used as a present day fact, and is not a historical theory. The method of using history is of some importance when arranging the methodological framework of the thesis.

John Hall assesses how history can relate to research methods:

The historical times of 'eras,' 'epochs,' and 'periods' offer shorthand for describing casually unique factors that may be called 'situational' in that they are not always operative. At a given time (and place), particular situational constraints and possibilities obtain.

.....Beyond contextual period, historical time is also marked by unfolding and reflexively altered situations. Eventful time flows in one direction in this world, and subsequent events cannot be taken as direct causes of prior events (whether they may be teleological or functional 'causes' is a separate question).<sup>20</sup>

### **B.3 Sources of Information and Potential Problems faced during research.**

Sources of information in Arabic were consulted during the research, and if any problems with technical language or complicated areas occurred, several academic colleagues of the researcher, whose native language is Arabic, were consulted. The strength of the sources available in English, written by Muslim academics, supported this area of research by presenting both the arguments and the counter-arguments, which established a balanced and impartial academic debate.

Concerning this sensitive research topic, some further pertinent points were also essential factors which required constant attention and consistent awareness by the researcher. On being a white, Western, non-Muslim, and studying Islam, the Qur'an and *shari'ah* it was important to be aware of the potential problems that might arise through 'historical sensitivity', 'cultural sensitivity', 'political sensitivity', and 'contextual sensitivity' while undertaking an area of research that is extremely sensitive in the Middle East. Researching the area of the death sentence for apostasy from Islam is considered a polemic issue amongst Muslims themselves and could, therefore, be seen as being controversial for a non-Muslim to analyse such an area.<sup>21</sup>

<sup>20</sup> Hall, John Ross, *Cultures of Inquiry : From Epistemology to Discourse in Sociohistorical Research*, Cambridge University Press, Cambridge, 1999, p163.

<sup>21</sup> More detailed assessment of 'cultural sensitivity', 'political sensitivity', and 'contextual sensitivity' can be found in Silverman, op.cit., p6-8



#### **B.4 'Sensitivity' of Research and Awareness of its Presence.**

Research in the social sciences can offer several areas of concern, due to levels of potential sensitivity that can be raised during the research project, if the researcher remains unaware of these factors. A balanced, neutral process of research, would require a methodological approach which actively involved an understanding of the sensitive topics it covers. There are four main forms of sensitivity which relate to this particular area of research and that were necessary to have been kept in mind, from the start to the end of this project. The four relevant areas are 'historical sensitivity', 'cultural sensitivity', 'political sensitivity' and 'contextual sensitivity'.

##### **B.4.1 'Historical Sensitivity'.**

History is a useful source of information in order for researchers to “use this kind of sensitivity by looking critically at assumptions of ‘progress’ in society.”<sup>22</sup> It is important to be able to assess relevant historical evidence for establishing the basis of the topic of concern. One example would be the assessment of the family structure, where research proved that in the 1950s and 1960s the ‘nuclear family’ (parents and children) had become more dominant than the traditional ‘extended family’ structure, where several generations lived in the same house. It could be argued that researchers had not included the fact that a lower life expectancy in the past had, perhaps, not allowed any ‘nuclear family’ structure to be able to survive. An important point that is relevant to this specific research would be that “historical sensitivity helps us to understand how we are governed.”<sup>23</sup> A relevant example here would be the acceptance that in the eighteenth century the majority of the British population were treated as a potentially dangerous ‘threatening mob’, who had to be controlled by the use of force. However, over time, the perception changes, and the population today are now “seen as individuals with ‘needs’ and ‘rights’ which must be understood and protected by society.”<sup>24</sup>

These points are raised in the thesis when assessing whether the *hurub al-ridda* (Wars of Apostasy) established that those who rebel against the Islamic authority would be

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<sup>22</sup> Silverman, Ibid., p6

<sup>23</sup> Ibid., p7

<sup>24</sup> Ibid., p7

perceived as being apostates from the Islamic community and would therefore receive the death penalty for treason and sedition against those who governed them.

#### **B.4.2 'Cultural Sensitivity'.**

This concept can be understood when a researchers realises that “Cultural sensitivity reveals how.....experiences are shaped by given forms of representation.”<sup>25</sup> The term ‘representation’ relates to the general premise and principles that become the undercurrent themes of how information is portrayed and presented from one generation to another. For example:

.....all narratives may have a common structure deriving from the fairy story. Equally.....mothers of handicapped children tell stories which appeal to their ‘responsibility’ in the face of adversity.....In both cases, we are provided with a way of turning our studies of texts or interviews into highly researchable topics.<sup>26</sup>

This particular form of sensitivity is very relevant to this specific research topic, as it the thesis assesses the ideas which are provided in the Middle Eastern culture and the sources of text studied range across the separate disciplines of Islamic law, (the text of jurisprudence) Islamic Theology (the text of the Qur’an and *ahadith*) and the themes of human rights in Islam and politics in the Middle East.

#### **B.4.3 'Political Sensitivity'.**

This is another very salient concept that had to be adopted in this research, especially when assessing the contemporary case studies that this research topic covers in Volume II. To emphasise why this form of methodology was important for this research, Silverman states why it is relevant:

Allowing the current media ‘scares’ to determine our research topics is just as fallible as designing research in accordance with administrative or managerial interests. In neither case do we

So, political sensitivity seeks to grasp the politics behind defining topics in particular ways. In turn, it helps in suggesting that we research how ‘social problems’ arise.<sup>27</sup>

Considering the contemporary media coverage of many issues directly related with the Middle East, it was extremely important to actively use the concept of ‘political sensitivity’ while undertaking this research. The main focus point of this thesis was to

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<sup>25</sup> Ibid., p7

<sup>26</sup> Ibid., p7

<sup>27</sup> Ibid., p7



emphasise the utter difference between Islam the monotheistic religion and the politics of the Middle East that uses the name of Islam as a label for the groups who propagate and actively implement what is defined in the West as 'terrorism'. It can be easily argued that through press coverage, the word Islam has gained the weight of some unfortunate pejorative meaning by non-Muslims in the West.

Therefore, it is important to note that the use of:

Political sensitivity does not mean that social scientists argue that there are no 'real' problems in society. Instead, it suggests that social science can make an important contribution to society by querying how 'official' definitions of problems arise.<sup>28</sup>

As an indication of how often controversial stories from the Middle East, which involved Islam in the realm of politics but have been portrayed in the mass media as Islam the religion, several incidents were covered by the international press and happened to have occurred while this research was being undertaken. By some incredible coincidence, which became completely relevant to the specific topic that this research covers, two *Shari'ah* court cases in Egypt were dealt with, both relating to the accusation of apostasy from Islam. Salah al-Din Muhsin was convicted of apostasy in June 2000 and received a suspended six month prison sentence. He was sent back to court for a re-trial in January 2001, when the sentence was extended to three years. This case compares to the accusation of apostasy in April 2001 and the consequent court case in July 2001 against the Egyptian feminist-novelist and academic Nawal el-Sa'adawi, who's case was eventually acquitted from court. Another incident that was also relevant to this project and occurred while the research was still being undertaken, was also covered by the international media. In March 2001 the Taliban destroyed the 1,800 year old Buddha statues in the area of Bamiyan in Afghanistan. This issue is also mentioned in the thesis.

Despite the fact that these other problems and issues which are regularly covered by the international media are not specifically related to this research topic, they do involve the politics of the Middle East and are valid to be mentioned here, to support the claim by Silverman that "current media 'scares' " need to be kept in mind by all researchers, so they are not influenced by them, without initially assessing the

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<sup>28</sup> Ibid., p7-8

message that the news reports send. For example, there have been daily news reports covering the present *intifada* by Palestinians since October 2000 and also the Israel Defence Force (I.D.F.) military reactions to numerous suicide bomber attacks by Palestinians.

Another obvious incident that was covered by the international media was the hijacked aeroplanes which were forced to crash into the Twin Towers in New York on September 11<sup>th</sup> 2001. Following this event began the West's 'War against Terrorism', which started in Afghanistan against the Taliban and the internationally based cells of the Al-Qaeda group.

Also, there is the far more contemporary on-going issue related to the American and British allied Forces' military attack and occupation of Iraq which was initiated in March 2003. This has been – and the consequences and repercussions still are – being covered by the media through newspapers, the radio and television news programmes on a daily basis.

#### **B.4.4 'Contextual Sensitivity'.**

The concept of the fourth form of these methodological approaches – i.e. 'contextual sensitivity' – is, unfortunately, slightly more vague to define when compared to the previous three forms. As Silverman indicates:

This is the least self-explanatory and most contentious category in the present list. By 'contextual' sensitivity, I mean two things: (a) the recognition that apparently uniform institutions like 'the family', 'a tribe' or 'science' take on a variety of meanings in different contexts; (b) the understanding that participants in social life actively produce a context for what they do and that social researchers should not simply import their own assumptions about what context is relevant in any situation.<sup>29</sup>

An important factor relates to point (b), in that it implies that researchers should act carefully and meticulously when inspecting a topic, in order to find out the reasons why people act and speak as they do. This is done so that the researchers may discover, if it becomes possible, whether participants arrange and organise their activities based on specific categories or institutions. However, it is also important to be aware that points (a) and (b) are disputable for their validity to be used:



Both points are contentious because so much social science, like common sense, takes for granted the existence of stable institutions ('the family') and identities (gender, ethnicity etc.). This is most clearly seen in quantitative studies which correlate identity-based variables (e.g. the relationship between gender and occupation). However, it is also present in qualitative studies that demand that we interpret their observations in terms of assumed social contexts.<sup>30</sup>

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<sup>29</sup> Ibid., p8

<sup>30</sup> Ibid., p8

## CHAPTER ONE

### 1.0 CRIME AND PUNISHMENT IN ISLAMIC LAW: INCONSISTENCIES AND AMBIGUITIES

#### 1.1 Introduction.

Before defining the words used in reference to the different forms of disbelief in Islam, and to then establish the context of the crimes or acts they relate to, it is important to initially analyse the *Shari'ah* interpretations of both the Qur'an and Sunnah, which will lead to understanding the various acts and the relevant forms of punishments that exist to prevent them. Some jurists include apostasy within the Qur'anic crimes referred to as *hudud* (singular *hadd*), whereas other jurists do not include it. Some Islamic jurists and theologians argue that there are six official *hudud*, some argue for seven, (by including *baghi* – sedition), while others state that there are only four such crimes and applicable punishments stated within the Qur'an. This inconsistency between the schools of Islamic law needs to be addressed, in order to show levels of confusion in the definition of apostasy and blasphemy.

A related point to this differing categorisation, is that the very punishment for apostasy, blasphemy or heresy within Islam is argued by some schools of Islamic law to be within the *hudud* crimes and punishments. However, there is an opposing argument which states that the crimes of apostasy and blasphemy and the relevant punishments for them, are not clearly defined within the Qur'an, but can only be found through the Prophet's Sunnah tradition, in *ahadith*. Thus, this side of the debate, argues that the offences of apostasy and blasphemy should be covered by *ta'zir* punishment, as it is a far more appropriate penalty system. This debate indicates the difference of opinions that are declared by the different schools of Islamic law. The different legal positions will be presented in this Chapter, while emphasising the significant level of changes in the legal decisions on cases of apostasy and blasphemy, when categorising these acts within *ta'zir* and not *hudud*.

The Islamic legal system consists of three forms of punishment, firstly, *hudud*, or *hadd* in single form, (fixed punishments stated within the Qur'an), secondly, *ta'zir* (discretionary punishment) and, thirdly, *qisas* (retaliation) which comes together with



*diya* (blood-money). These three forms of punishment are defined by F. A. Klein in his work *The Religion of Islam* :

Punishment (عقوبات) : Punishments inflicted according to the Muslim law for various crimes and offences, are (1) حد (pl. حدود) that is punishments for certain crimes, fixed by the law of the Qur'an or Traditions; (2) تعزير or chastisement for offences, not fixed by the law, but left to the option and discretion of the Imam; (3) القصاص or Retaliation.<sup>31</sup>

*Hudud* and *qisas* are both restricted to crimes where both the offences and the punishments are prescribed in the Qur'an and Sunnah. *Ta'zir* covers all other crimes that are not specified within those two sources.<sup>32</sup> Added to this difference, both *Qisas* and *Ta'zir* :

are entirely different in their scope from *Hudud*. The question of compromise or latitude does not arise in case of *Hudud* which carry prescribed, specific punishments, whereas there is scope for latitude in *Qisas*. In *Qisas*, the right rests with man and not with God. And in *Ta'zir*, there is no fixed punishment. While dealing with *Hudud*, an *Imam* or *Qadi* cannot depend on his personal knowledge, whereas in *Ta'zir*, he is free to exercise his own discretion.<sup>33</sup>

Initially, the crimes and punishments within *qisas* will be briefly covered, but only in general terms, because it is the section of the Islamic jurisprudence which does not include any crimes or acts that are relevant to this specific study. However, *qisas* will be covered because there are also inconsistencies to be found in the punishments presented in *qisas* by the different schools of law. The debate on the penalty for apostasy within Islamic law involves the differing opinions for including the act between the other two forms of punishment; hence, whether it should be accepted as

<sup>31</sup> Klein, F. A., *The Religion of Islam*, Curzon Press, London, 1979, p219

<sup>32</sup> Mohammad Iqbal Siddiqi, *The Penal Law of Islam*, 1991, International Islamic Publishers, New Delhi, p158. Also see El-Awa, Mohammad Selim, *Punishment in Islamic Law : A Comparative Study*, American trust Publications, Indianapolis, 1982, p96. Also see Tahir-ul-Qadri, Muhammad, *Islamic Penal System and Philosophy*, Minhaj-ul-Qur'an Publications, Lahore, 1995, p259, p429. See also Tahir-ul-Qadri, Muhammad, *Classification of Islamic Punishments*, Minhaj-ul-Qur'an Publications, Lahore, 1988, p5. Also see Al-Alfi, Ahmad Abd al-Aziz, 'Punishment in Islamic Law' in M. Cherif Bassiouni, (ed.) *The Islamic Criminal Justice System*, Oceana Publications Inc., New York, 1982, p227 and also see Safwat, Safia F., 'Offences and Penalties in Islamic Law,' in *The Islamic Quarterly*, The Islamic Cultural Centre, London, Vol. 26, No. 3, 1982, p153-154. Also see Siddiqi, Mohammad Suleman, 'The Concept of *Hudūd* and its Significance' in *Islamic Culture*, The Islamic culture Board, Hyderabad, India, Vol.LV, No.1, 1981, p192

<sup>33</sup> Siddiqi, Mohammad Suleman, 'The Concept of *Hudūd* and its Significance' *ibid.*, p192

an authentic *hudud* or to be treated for punishment by *ta'zir*. However, although *qisas* is not relevant to this research in terms of the crime and the appropriate punishments involved for apostasy and blasphemy, it does need to be covered in some depth, because it does present the difference of opinions that are offered by the four Sunni schools of Islamic jurisprudence (*fiqh*), in the categorisation of the acts to be included within each given 'crime.' This is a further example of some level of ambiguity and the blurring of different views that exist between the Islamic schools of law, in their different perspectives of defining certain crimes. This also indicates that the disagreement in how to sentence certain crimes and the difference of the penalties delivered by the schools of law, does not just exist in the sensitive area of apostasy and blasphemy.

This very point, with the various different opinions and alternative legal perspectives on identifying the 'crimes,' is very relevant to the debate that this research addresses, as it presents some level of understanding in the comparison of what exists as – and what this researcher believes actually *should* be – the legal position on 'apostasy' and 'blasphemy' in *Shari'ah*.

Therefore, in order to assess the legal positions on this topic, this Chapter will now introduce the differing crimes and forms of punishments in the order of *qisas*, then *ta'zir* and then move into *hudud*. They are presented in this order because, following the discussion of the first two, *qisas* and *ta'zir*, the important arguments are then discussed in reference to whether the *ta'zir* punishment is to be more appropriate as the penalty procedure for apostasy and blasphemy in Islam rather than including it as a *hadd* (pl. *hudud*). This logical arrangement of the crimes, punishments and the related arguments concerning them, will be easier to follow and then conclude on, in this appropriate sequence.

## 1.2 *qisas* – (القصاص) and *diya* – (الدية).

The word *qisas* – (القصاص) relates to punishments for murder and other serious injuries on other people. The meaning of *qisas* is very similar to that of *musawah*,



making something equal to something else.<sup>34</sup> With this meaning, it is used in the sense of making the penalty an equal, or appropriate nature to the crime committed. However, contrary to this view, others argue that the definition is best rendered as ‘a just retribution.,’<sup>35</sup> so there can be seen to be an inconsistency, or disagreement, in the very definition of the word, even before one assesses the crimes and punishment that relate to it.

The word *qisas* – (القصاص) derives from the verb root *qassa* which translates as ‘he followed, after his track or footsteps, or he endeavoured to track him’ and as the guilty party is tracked and punished, hence the process is called *qisas*.<sup>36</sup> Safia Safwat explains that to translate *qisas* as ‘retaliation’ is incorrect, as ‘retaliation’ in English has a much broader meaning and is “equivalent almost to returning evil for evil and would more fitly apply to blood-feuds.”<sup>37</sup> *Qisas* is also interchangeable with the term *qawad*, used in Islamic law for punishment as ‘retaliation.’ Although the term *qisas* is mainly used, the term *qawad* is used when relating to the penalty that is based on inflicting the same injury upon the perpetrator, that they had given to the victim.<sup>38</sup>

<sup>34</sup> In his commentary on the Qur’anic verse 2:178, Mohammad Asad also makes this point, mentioning that : “As for the term *qisas*, occurring at the beginning of the above passage, [i.e. 2:178] it must be pointed out that – according to all classical commentators – it is almost synonymous with *musawah*, i.e., ‘making a thing equal (to another thing)’ : in this instance, making the punishment equal (or appropriate) to the crime – a meaning which is best rendered as ‘just retribution’ and not (as has been often, and erroneously done) as ‘retaliation,’ ” Asad, Mohammad, *The Message of the Qur’an : Translated and Explained*, 1980, Dar al-Andalus Limited, Gibraltar, footnote 147 on p37. Note that both the verses 2:178 and 4:92 will be dealt with, in detail, below. Mohammad Ali comments on 2:178 in a similar manner, as Asad, in terms of the punishments on the murderer. He argues that for certain circumstances, there is the alternative method to alleviate the guilt, such as in the case where a murderer can pay the *diyat*, (الدية) or blood money, to the relatives of the victim. See Ali, Maulvi Mohammad, *The Holy Qur’an*, op.cit., in footnote 221 on p79. Verse 4:92 is discussed in more detail below.

<sup>35</sup> Safwat, Safia F., ‘Offences and Penalties in Islamic Law,’ in *The Islamic Quarterly*, The Islamic Cultural Centre, London, Vol. 26, No. 3, 1982, p154 and also Siddiqi, Mohammad Iqbal, *The Penal Law of Islam*, op.cit., p145.

<sup>36</sup> Siddiqi, Mohammad Iqbal, *The Penal Law of Islam*, op.cit., p145

<sup>37</sup> Safwat, Safia F., ‘Offences and Penalties in Islamic Law,’ in *The Islamic Quarterly*, op.cit., p154. See also Ali, Abdullah Yusuf, *The Holy Qur’an*, op.cit., Vol. I, in footnote 182 on p70

<sup>38</sup> Safwat, Safia F., ‘Offences and Penalties in Islamic Law,’ in *The Islamic Quarterly*, ibid., p154 and in footnote 24 on p179. Also see El-Awa, Mohammad Selim, *Punishment in Islamic Law*, op. cit., p69. “The word *qisas* is derived from the verb *qassa*, meaning ‘he cut’ or ‘he followed his track in pursuit,’ hence it came to mean retaliation by killing for killing, or injuries for injuries. The word *qawad*, is derived from the verb *qada*, meaning ‘to drive’ or ‘to lead.’ Its usage in the definition of *qisas* is due to the fact that the culprit was often led by something (e.g. a piece of rope) to the place of execution, or because he was led by his action to the result which followed, i.e., the carrying out of *qisas* against him. However, the word *qisas* is much more common in Islamic legal writing than the word *qawad*.” El-Awa, Mohammad Selim, *Punishment in Islamic Law*, op. cit., footnote 1 on p90. El-Awa also cites : Sharabasi, Ahmad, *Al-Qisas fil-Islam*, Cairo, 1954, p17, (El-Awa, Ibid., in footnote 1, p90)



These different definitions and the different use of the words, can present some level of confusion, as the meaning of the word seems to depend on when it is used and the acts that it refers to. The meaning will differ, depending on the context of its use. Mohammad Iqbal Siddiqi suggests that :

The ‘Arabic [sic] term “*Qisas*” stands for the return of life for life in cases of murder. It does not, however, mean that the murderer should be killed in the same manner in which he committed the murder. It only means that his life should be taken as he took the life of another. The punishment to be inflicted for this crime is death.<sup>39</sup>

The term *diya* (الدية) is known as ‘blood money.’ It is the money paid in compensation to the relatives following one particular form of homicide. The penalties are similar to *hudud* as they are also restricted on the level of “no less, no more” but they differ from *hudud* as they are based on private claims. An individual can carry out the *qisas*, they can also waive it, or choose to receive the blood money instead, or even choose to waive this as their final settlement.<sup>40</sup>

One point concerning *qisas*, is whether murder is a crime where the government may intervene and impose the punishment, or whether it is a civil crime falling within the area of law called ‘tort.’ In the latter case, the resolution to the act of a serious injury can be reached by the request of the individual involved, or if it is murder, the final compensation of an appropriate punishment can be decided by the victim’s family. It is held within the Islamic legal system as a ‘civil wrong’ thus, the concern for the final settlement weighing on the victim and the relatives overpowers the role of the crime itself. This appears to be the case at first sight, but becomes a different conclusion in the fuller insight into *qisas* and the issue of *diya* (blood money).<sup>41</sup> Therefore, it is advisable to review the historical nature of *qisas* before discussing it in any depth, but it is not possible to undertake this assessment within the narrow realms of this research, as the form of *qisas* in *Shari’ah* punishments has no relevance to the thesis debate on apostasy.

It is very clear that within Islam, the sanctity of life is of unquestionable importance, and hence, for the person who deliberately sheds the blood of another through a

<sup>39</sup> Siddiqi, Mohammad Iqbal, *The Penal Law of Islam*, op.cit., p148

<sup>40</sup> Safwat, Safia F., ‘Offences and Penalties in Islamic Law,’ in *The Islamic Quarterly*, ibid., p154



deliberate injury, they will be punished to suffer the torment of Hell. For the one who goes further and intentionally removes the life from another, they will have slaughtered the whole of humanity.<sup>42</sup>

This assessment is based on various Qur'anic verses, that refer specifically to *Qisas* as well as the equally applicable *ahadith* on this topic. Some examples of the Qur'anic references would be 5:32<sup>43</sup> and also 17:33.<sup>44</sup> There is also an interesting reference in the Qur'an for those who are to be respected and protected in the community, and those who should receive the punishment from God, for having undertaken specific offences. This can be seen in 25: 68-69.<sup>45</sup> Siddiqi suggests that this verse clearly shows that the gravest possible sin between humans is for one to murder another, with no defensible justification for doing so. He also presents the position of the Qur'an concerning a person found guilty of the intended, premeditated murder of a Muslim. This act is understandably commanded against within the Qur'an, in 4: 93,<sup>46</sup> where the perpetrator will be sent to Hell for undertaking such an evil deed.

Although a brief definition of the different forms of homicide can be presented here, it cannot be analysed in any depth, as that issue is not relevant to the main thesis being researched here. However, what *is* relevant, and what can be seen here, is that the schools of Islamic law categorise the same crimes by placing them in different groups. This is another illustration of the lack of consistency that exists in how the schools of

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<sup>41</sup> El-Awa, Mohammad Selim, *Punishment in Islamic Law*, op.cit., p69

<sup>42</sup> Mohammad Iqbal Siddiqi, *The Penal Law of Islam*, op.cit., p145

<sup>43</sup> "Whoso murders a person without lawful right or creates disorder in the land, it is as if he has killed all mankind; and whoso helps one to live, it is as if he has given life to all mankind." (5:32), Tahir-ul-Qadri, Muhammad, *Islamic Penal System and Philosophy*, Ibid., p402-403. Also see Nadvi, Syed Habibul Haq, *Islamic Legal Philosophy and the Qur'anic Origins of the Islamic Law (A Legal-Historical Approach)*, op.cit., p84

<sup>44</sup> "Don't murder anybody (or take away any life) which is forbidden by almighty Allah except for lawful purpose." (17:33) Tahir-ul-Qadri, Muhammad, *Islamic Penal System and Philosophy*, Ibid., p401

<sup>45</sup> "And they call upon not upon another god with Allah and slay not the soul which Allah has made sacred, except in the cause of justice, nor commit fornication and he who does this (not only) meets punishment (but) the Penalty on the Day of Judgement will be doubled to him, and he will abide therein in disgrace forever." (25: 68-69), Siddiqi, Mohammad Iqbal, *The Penal Law of Islam*, op.cit., p146

<sup>46</sup> "As regards the one who kills a Believer wilfully, his recompense is Hell [*sic*], wherein he shall abide forever. He has incurred Allah's wrath and His curse is on him, and Allah has prepared a woeful torment for him." (4:93), Siddiqi, Mohammad Iqbal, *The Penal Law of Islam*, op.cit., p147. The verse is also translated as : "Whoso kills a believer deliberately, his reward shall be hell, wherein he shall abide and Allah will be annoyed with him and will cast him away and will prepare for him a great punishment," Tahir-ul-Qadri, Muhammad, *Islamic Penal System and Philosophy*, Ibid., p402



law understand and determine how they clarify crimes – and differ in the appropriate punishments they deliver for the same crime. *Qisas* (القصاص) and *diya* (الدية), when placed together, are referred to as *Al-Janayat*, which are the crimes against persons.<sup>47</sup> The punishments held for the crime of ‘murder,’ as *qisas* have been divided into two parts, as the crimes of *qisas* are separated into two forms. There is the ‘retaliation for life’ or the ‘crimes against the person,’ (*al-qisas fi’n-nafs* - القصاص في نفس) and the ‘retaliation for organs’ or the ‘crimes against the body,’ (*al-qisas fi’ma dum’an-nafs*), also entitled as القصاص في الاعضاء.<sup>48</sup> The crimes of murder would be in the first category and the crimes of inflicting serious injuries or wounds are in the second.<sup>49</sup> It is of common form to refer to the first category as *qisas* and as *qawad* for the second. Concerning *diya*, the term is based on the payment of blood-money in response to a killing and the term *arash* is used on the payment of blood-money in response to the infliction of injuries. Both *diya* and *kaffara* (penance) are associated to incidents of an accidental killing.<sup>50</sup> The more important punishments to explain further are the different acts of deliberate, intentional murder and how they mentioned and dealt with as a form of penalty within the Qur’an.

Within the Qur’an, both forms of killing, both that of murder and that through an unfortunate accident are discussed. For intentional murder, the prescribed punishment stated by the Qur’an is the victim’s relative’s choice of either the having the murderer executed via *Qisas* or choosing to accept blood-money instead. The Quran’ic verse relating to this is 2:178-179.<sup>51</sup> There is also reference in the Qur’an, stating that a

<sup>47</sup> Tahir-ul-Qadri, Muhammad, *Islamic Penal System and Philosophy*, Minhaj-ul-Qur’an Publications, Lahore, 1995, p401

<sup>48</sup> El-Awa, Mohammad Selim, *Punishment in Islamic Law*, op.cit., p71 and also see Tahir-ul-Qadri, Muhammad, *Islamic Penal System and Philosophy*, Ibid., p401

<sup>49</sup> Siddiqi, Mohammad Iqbal, *The Penal Law of Islam*, op.cit., p145, also see El-Awa, Mohammad Selim, *Punishment in Islamic Law*, ibid., p71 and see Tahir-ul-Qadri, Muhammad, *Islamic Penal System and Philosophy*, Ibid., p401

<sup>50</sup> El-Awa, Mohammad Selim, *Punishment in Islamic Law*, ibid., p71. Safia Safwat also defines *kaffara* as ‘expiation,’ Safwat, Safia F., ‘Offences and Penalties in Islamic Law,’ in *The Islamic Quarterly*, op.cit., p172 and Majid Khadduri declares it to mean ‘expiation or atonement’ in Khadduri, Majid, *The Islamic Law of Nations; Shaybani’s Siyar – Translated With An Introduction, Notes and Appendices*, 1966, The Johns Hopkins Press, Baltimore, USA, p102

<sup>51</sup> “O you who believe, retaliation is prescribed for you in the matter of the murdered; the freeman for the freeman and the slave for the slave, and the female for the female. But if any remission is made to him by his (injured) brother (in faith), then grant any reasonable demand and compensate him with handsome gratitude. This is an alleviation and a mercy from your Lord. And whoever transgresses after this, for him there will be a painful chastisement. In *qisas* there is life for you, O men of understanding, in order that you may restrain yourselves. (2:178-179), El-Awa, Mohammad Selim, *Punishment in Islamic Law*, ibid., p71 also see Siddiqi, Mohammad Iqbal, *The Penal Law of Islam*, op.cit., p148 and



believer should never kill another believer, which is proclaimed in 4:92, together with the reaction to an accidental killing.<sup>52</sup>

As can be seen by Muhammad bin Idris Shafi'i, in his work *kitab al-Umm*, by placing these two verses together, the jurists established the principle that *qisas* will not be imposed in the circumstances of an accident, as only *diya* or *kaffara* would be appropriate in these situations.<sup>53</sup> In the proven case of a deliberate murder, the penalty of *qisas* is used to take away the life from the one who took away another's life. The jurists do not entirely agree on this point, as there are differing views for the means in which the punishment will be imposed in such cases involving *qisas*. For example, the Hanafi and Hanbali schools maintain that the murderer should be killed with a sword in punishment, irrelevant as to how they would have killed their own victim. However, the Maliki, Shafi'i and Zahiri schools of law argue that the guilty murderer should be killed in the same manner as how they undertook the act of murder. The first view is based on the idea that imposing *qisas* as a penalty is there to put those guilty of murder to death, thus the convict should be killed in an easy and efficient manner. The second view is based on the actual interpretation of the word *qisas* for it to mean 'equality.' These schools of law believe that the nature of 'equality' after a crime of murder is that, in return, the life of the murderer should equally be taken, and the manner in which the penalty is imposed should be equally considered.<sup>54</sup>

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see Tahir-ul-Qadri, Muhammad, *Islamic Penal System and Philosophy*, Ibid., p403-404. And also see Safwat, Safia F., 'Offences and Penalties in Islamic Law,' in *The Islamic Quarterly*, ibid., p172

<sup>52</sup> Never should a believer kill a believer unless by mistake. And whoever kills a believer by mistake should free a believing slave, and pay compensation to the family of the deceased, unless they remit it freely..... (4:92), El-Awa, Mohammad Selim, *Punishment in Islamic Law*, ibid., p71-72. El-Awa emphasises here that it is not necessary to focus on the legal issues "that is found in the books of *fiqh* concerning slaves, simply because this has long been a matter of historical concern only." (El-Awa, Ibid., footnote 13, p91)

<sup>53</sup> El-Awa, Mohammad Selim, *Punishment in Islamic Law*, ibid., p71-72. El-Awa also cites : Shafi'i, Abu 'Abd-Allah Muhammad bin Idris, *Kitab al-Umm*, op.cit., Vol.VI, p4ff and also cites Jassas, Abu Bakr Ahmad b. 'Ali, *Ahkam al-Qur'an*, Istanbul, 1355AH, Vol.II, p222ff (El-Awa, Ibid., footnote 16, p91)

<sup>54</sup> El-Awa, Mohammad Selim, ibid., p72. El-Awa also cites : Ibn Hazm, 'Ali Muhammad *Al-Muhulla*, Beirut, no date given, Vol. X, p370-373 and also Shafi'i, Abu 'Abd-Allah Muhammad bin Idris, *Kitab al-Umm*, ibid., Vol.VI, p54 and also Jassas, Abu Bakr Ahmad b. 'Ali, *Ahkam al-Qur'an*, Ibid., Vol.I, p160-161, (El-Awa, Ibid., footnote 18, 19, 20 and 21 on p91)

### 1.2.1 A typology of homicide according to Islamic law.

It is of some use to identify the different Islamic legal schools' interpretation and definitions of homicide, as they are not consistent with the different categories of this crime which they provide independently. This factor is very relevant to the main area of research in this thesis, as it shows that the different legal schools offer varying views on the act of the crime. This is an important issue to raise, as it correlates quite well with the suggestion that the area of differing legal definitions presents a level of ambiguity, concerning how crimes are categorised. There also is a clear inconsistency between the schools of law, in how they define a given crime. This situation supports the argument that such inconsistency does not exist only relating to the crimes – or sins – of apostasy, blasphemy or any form of 'unbelief' alone, but ambiguity occurs throughout the *Shari'ah* legal system.

In defining the act of 'murder,' homicide is classified into two categories, but the actual content of these two categories vary from one school of law to another. The largest number of the different forms of murder are held by the Hanafi school which recognises five forms of homicide. These five forms are: 1, deliberate, wilful murder (*al-qatl al'amd* – القتل العمد); 2, Manslaughter, or 'quasi- deliberate' (*al-qatl Shabahu'l -'amd* – القتل شبه العمد); 3, 'murder by misadventure' or 'accidental death' (*al-qatl al-Khata* – القتل الخطاء); 4, murder by causing death in a similar nature to 'misadventure,' or an equivalent act of *al-qatl al-Khata* – القتل الخطاء, which is known as *al-qatl qa'im maqam al-khata* – القتل قائم مقام الخطاء or can also be known as *al-qatl shibhu'l-khata* – القتل شبه الخطاء. Finally, 5, 'murder by an intermediate cause' or an indirect result of death, which is known as *al-qatl bi-sabab* – القتل بالسبب.<sup>55</sup>

These five forms of murder were developed by the renowned Hanafi jurist, Abu Bakr Ahmad b. 'Ali Jassas who, in his work *Ahkam al-Qur'an*, in 1355AH, introduced these

<sup>55</sup> Mohammad Iqbal Siddiqi, *The Penal Law of Islam*, op.cit., p147-p153 and also El-Awa, Mohammad Selim, *Punishment in Islamic Law*, ibid., p74 and Tahir-ul-Qadri, Muhammad, *Islamic Penal System and Philosophy*, Ibid., p406-4412. Also see Safwat, Safia F., 'Offences and Penalties in Islamic Law,' in *The Islamic Quarterly*, op.cit., p154



five classifications of the crime.<sup>56</sup> In this work, al-Jassas commented that before this introduction, the Hanafi jurists had classified murder in the first four categories, not including *al-qatl bi-sabab* – القتل بالسبب.<sup>57</sup>

The other schools of law classify homicide in a different manner to this. The Shafi'i, Hanbali, and Zaydi schools recognise only three classifications, which are : intentional murder (*al-qatl al'amd* - القتل العمد), manslaughter, or a 'quasi-deliberate' killing, (*al-qatl shabahu'l -'amd* - القتل شبه العمد) and the 'murder by misadventure' or 'accidental death' (*al-qatl al-khata* - القتل الخطاء). The Maliki and Zahiri schools divide the crime into only two categories : death by a deliberate or an accidental act.<sup>58</sup> These differing classifications of homicide, show the clear message that the different schools of Islamic law, although using the same sources of the Qur'an and Sunnah, to define their interpretation of *Shari'ah* – it is still quite noticeable that the very interpretations themselves, differ somewhat.

The second form of punishment in the Islamic legal system; that of *ta'zir* - تعزير, will cover the conditions for its implementation and the crimes that are related to it. This section also indicates how appropriate this penalty system is for dealing with cases of apostasy and blasphemy.

<sup>56</sup> El-Awa, *ibid.*, p74

<sup>57</sup> El-Awa, Mohammad Selim, *ibid.*, p74. El-Awa also cites : Jassas, Abu Bakr Ahmad b. 'Ali, *Ahkam al-Qur'an*, op.cit., Vol.II, p222-232 and also al-Sarakhsi, Mohammad b. Sahl, (called Abu Bakr), *Mubsut*, Cairo, Matba'at al-Sa'adah, 1342AH, Vol.XXVI, p59 (El-Awa, *Ibid.*, footnote 41, p92).

[ It is interesting to note that *Mubsut*, by al-Sarakhsi, is also dated as 1324AH, by Mohammad Hashim Kamali, in his work *Freedom of Expression in Islam*. He cites the work as : al-Sarakhsi, Shams al-Din Mohammad, *al-Mubsut*, Cairo, Matba'at al-Sa'adah, 1324AH and also quoted as published in Beirut, Dar al-Ma'rifah, 1406/1986; found in Kamali, Mohammad Hashim, *Freedom of Expression in Islam*, op.cit., on p312]

<sup>58</sup> El-Awa, Mohammad Selim, *Punishment in Islamic Law*, *ibid.*, p75. El-Awa also cites : Ibn Hazm, Ali Muhammad, *Al-Muhulla*, op.cit., Vol.X, p343 and also Shirbini, Muhammad al-Khatib, *Mughni al-Muhtaj*, (a commentary on Yahya Sharaf al-Din Nawawi's *Minhaj al-Talibin*), Cairo, 1308AH, Vol.VIII, p260. El-Awa also notes that "It is interesting that some of the Maliki and Hanafi jurists hold a view according to which the varieties of homicide are the first four of the five held by the majority of the Hanafi school." This information can be found in Kasani, 'Ala al-Din Abu Bakr b. Mas'ud, *Badai'*

### تعزير - 1.3 ta'zir

Within *ta'zir* the punishments are provided for offences that are not covered by either *hudud*, or *Qisas*. A selection of the crimes and their punishments will be covered here, as this information is an important part of this research. As will be seen, added to what was provided above in the differing jurist opinions on the punishment provided in *Qisas* on the various categories that are accepted to the crime of homicide, here the jurists differ in the level of penalties that are provided for the crimes under *ta'zir* punishment. The different legal penalties, that are based under the judge's discretion within *ta'zir*, also differ on their levels of quantity in which they are delivered. This can be seen under the differing arguments provided by the four schools of Islamic law in the forms of punishment including 'admonition' ( *al-Wa'z* – الوعظ ), 'reprimand' ( *al-Tawbikh* – التوبيخ ), 'threat' ( *al-Tahdid* – التهديد ), a form of 'public disclosure' ( *al-Tashhir* – التشهير ), imprisonment, ( *al-Habs* – الحبس ), flogging ( *al-Jald* – الجلد ) and, more importantly, death penalty ( *al-ta'zir bil-qatl* – التعزير بالقتل ), that are provided for a given crime, under *ta'zir*.

The judge's power of discretion is then discussed, along with the five major crimes that are categorised within *ta'zir*. It is of great interest, to find that the crime of 'insults' ( *Al-Sabb* – السب ) is included in those crimes punished by *ta'zir*. This crime is of more obvious relevance to be assessed, in the capacity of discretion a judge is allowed, when delivering the sentence for it. However, *al-sabb* - السب includes the differing forms of blasphemy. As stated in the first Chapter, the differing terms that refer to blasphemy within Islam consist of *sabb Allah* (to vilify, slur, insult, blaspheme against God), *sabb al-rasul* (blaspheme against the Messenger), also known as *sabb al-nabi* (blaspheme against the Prophet) and *sabb al-sahabi* (to insult on of the Companions of the Prophet). The blasphemers themselves are referred to as a *sabbab*.<sup>59</sup> Therefore, it is relevant to consider that although the crime of *al-sabb* – السب is raised in the Qur'an, and is included in the punishment of *ta'zir*, this completely removes it from being categorised as a crime of *al-hudud*. As will be seen in the following Chapters, the crimes of blasphemy and apostasy are rarely separated

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*al-Sanai'*, Cairo, 1328/1910, p233 and also Dardir, Shaikh Ahmad, *Al-Sharh al-Kabir*, a commenatry on *Mukhtasar Khalil*, Cairo, no date given, Vol.IX, p319, (El-Awa, Ibid., footnote 42, p92)



to be specifically different, as ‘individual’ crimes. In most legal literature, they are both cited in the same analysis of the rejection of the Prophet Muhammad, the rejection of Islam and the clear rejection of God. This being the case, if *al-sabb* – السب is cited as a crime punishable by *ta’zir*, it strongly supports the argument that promotes the act of ‘passive apostasy’<sup>60</sup> to be included in *ta’zir* punishment alone. This, therefore, would not make it possible to categorise apostasy in the crimes of *hudud*, i.e., the crimes that are argued to be found in the Qur’an. This point is raised and discussed in detail, with an assessment of the arguments that are presented for and against this view, in the section on *hudud* which follows this section on *ta’zir*.

*Ta’zir* is derived from the word ‘*azar*’ which means to prevent; to respect and reform.<sup>61</sup> The verb of the word, in the first and second form is present in the Qur’an, in 5:12; 7:157 and 48:9,<sup>62</sup> so it does have a wide range of meanings. However, from a legal perspective, *ta’zir* is the punishment preventing the criminal from re-offending and to reform their position in society. Ibn Farhun, in his work *Tabsirat al-Hukkam*, defines *ta’zir* as a “disciplinary, reformatory and deterrent punishment.”<sup>63</sup> *Ta’zir* is also defined as :

discretionary punishment to be inflicted for transgression against Allah, or against an individual, for which there is neither a fixed punishment nor a penance or expiation (*Kaffara*).<sup>64</sup>

In *Al-Hedaya*, an Hanafi *fiqh* manual, *ta’zir* is defined as :

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<sup>59</sup> Kamali, Mohammad Hashim, *Freedom of Expression in Islam*, op.cit., p236 and p326

<sup>60</sup> ‘Passive apostasy’ can be understood to be a simple internal change of ‘*iman* (faith)’ undertaken by any Muslim, who decides to change their religious belief, but without involving any other person in doing so. Therefore, it would be an act without causing any physical attack or rebellious reaction in any manner, against the Islamic religious authority. It would be just a very private matter, involving that person alone. ‘Passive’ equals a ‘peaceful’ act: as a “non-violent refusal to co-operate,” Sykes, J.B. (Ed.), *The Concise Oxford Dictionary of Current English*, op.cit., p749.

<sup>61</sup> Mohammad Iqbal Siddiqi, *The Penal Law of Islam*, op.cit., p158

<sup>62</sup> Mohammad Iqbal Siddiqi, *ibid.*, p158. Also see El-Awa, Mohammad Selim, *Punishment in Islamic Law*, op.cit., p96 and in footnote 2, p120. Also see Tahir-ul-Qadri, Muhammad, *Islamic Penal System and Philosophy*, op.cit., p265 also see also Tahir-ul-Qadri, Muhammad, *Classification of Islamic Punishments*, op.cit., p11

<sup>63</sup> Ibn Farhun, Ibrahim Shams al-Din Muhammad, *Tabsirat al-Hukkam*, Cairo, 1301AH, Vol.II, p200. Also see El-Awa, Mohammad Selim, *Punishment in Islamic Law*, *Ibid.*, p96

<sup>64</sup> El-Awa, Mohammad Selim, *Ibid.*, p96. El-Awa also cites Sarakhsi, Muhammad b. Sahl (called Abu Bakr), *Mabsut*, Cairo, 1342AH, Vol.IX, p36 and also cites Shirbini, Muhammad al-Khatib, *Mughni al-Muhtaj*, (a commentary on Yahya Sharaf al-Din Nawawi’s *Minhaj al-Talibin*), Cairo, 1308AH, Vol.IV, p176 also see Mohammad Iqbal Siddiqi, *The Penal Law of Islam*, *Ibid.*, p159



*Ta'zir*, in its primitive sense, means prohibition, and also instruction; in Law it signifies an infliction undetermined in its degree by the law, on account of the right either of God, or of the individual; and the occasion of it is any essence of which *Hidd*<sup>65</sup><sub>(sic)</sub> (or stated punishment) has not been appointed; whether that essence consist in word or deed.<sup>66</sup>

Although a form of the word *ta'zir* is present in the Qur'an, the word *ta'zir* itself does not occur, and neither is it strongly reported in the *ahadith*. Within the Qur'an there are several crimes mentioned with no specific punishment, thus it is left in discretion to the *qadi* (judge) to deliver the appropriate sentence. It appears *An-Nisa*, 4:16, "If two men among you are guilty of lewdness, punish them both."<sup>67</sup> Mohammad Selim El-Awa suggests that this verse, according to commentators including the renowned Isma'il b. 'Omar Ibn al-Kathir and the more contemporary Sayed Qutb, is in reference to homosexual relationships between men.<sup>68</sup> The word can also be found in 4:34:

As to those women on whose part you fear disloyalty and ill-conduct, admonish them (first), (next) refuse to share their beds and (last) beat them (lightly).<sup>69</sup>

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<sup>65</sup> "[Case of an infidel embracing the faith during infliction of punishment]

If a single stroke be infliction on an infidel on account of slander, and he should then embrace the faith, and the remainder of the punishment be afterwards infliction, in such case his evidence is admissible, because the rejection of evidence is the means of rendering punishment entire and complete, and is therefore a manner of punishment; but as the degree of punishment infliction after his having embraced the faith is only a partial correction, and not what can be properly termed punishment, the rejection of evidence is not to be considered as a manner of it [ The strange sophistry turns entirely upon the meaning of the term *Hidd*, <sub>(sic)</sub> which is defined to be a certain state correction completely executed, any thing short of this not being *Hidd* <sub>(sic)</sub> (punishment), but only chastisement]. It is recorded from Abu Yusuf that his evidence must for the future be rejected, because the degree of punishment infliction subsequent to his conversion is the greater proportion of it, and the smaller is a dependent of the greater. But the former is the more approved doctrine." *Al-Hedaya*, (Hanafi Manual) Vol. II, Serial No. 3886, found on *e:\Islamica\lawbase\lawbase.tex* on CD Rom *Islamica : Digital Library of Islamic Software*, Islamic Computing Centre, London, [ [www.ummah.org/icc](http://www.ummah.org/icc) ].

<sup>66</sup> *Al-Hedaya*, (Hanafi Manual) Vol. II, Serial No. 3889, found on *e:\Islamica\lawbase\lawbase.tex* on CD Rom *Islamica*, Ibid.,

<sup>67</sup> Qur'an; 4:16, Mohammad Iqbal Siddiqi, *The Penal Law of Islam*, op.cit., p159. Also see El-Awa, Mohammad Selim, *Punishment in Islamic Law*, op.cit., p97,

<sup>68</sup> Ibn Kathir, Isma'il b. 'Omar (also known as 'Imad al-Din ), *Tafsir al-Qur'an al-'Azim*, (no date given), Cairo, Vol. I, p462 and Sayed Qutb, *Fi-Zilal al-Qur'an*, Istanbul, 1355AH, Vol. IV, p256. Ibn Kathir is also given as full name : Abu'l Fida Isma'il Ibn al-Kathir, see Ahmad, Mirza Bashir-ud-Din Mahmud, *The Holy Quran with English Translation and Commentary*, 1947, Sadr Anjuman Ahmadiyya, Qadian, India, Volume I, pL

<sup>69</sup> Mohammad Iqbal Siddiqi, *The Penal Law of Islam*, Ibid., p160 and p165; Qur'an; 4:34. It is important to note here that "It is evident from many authentic Traditions that the Prophet himself intensely detested the idea of beating one's wife and said on more than one occasion, 'Could any of you beat his wife as he would beat a slave and then lie with her in the evening?' According to another Tradition, he forbade the beating of *any* woman with the words. 'Never beat God's handmaidens.' " Mohammad Asad, in *The Message of the Qur'an*, op.cit., footnote 45, p109-110. Also see Sunan Abu Da'ud, *hadith* 2141, narrated by Abdullah ibn AbuDhubab and *hadith* 0142 narrated by Laqit ibn Sabirah from *e:\Islamica\winhadis\winhadis.tex* and Sahih Al-Bukhari, Vol. 8, *hadith* 68, narrated by



This verse allows the husband to act under discretion of how to punish the disloyal wife, once proof is undisputed. Some jurists consider this verse of discretion to be the source of *ta'zir* punishment (*al-asl fil-ta'zir*), as it is based on an analogy (*qiyas*) concerning the husband as the head of the family, thus the basic root of society. The husband has the ability to safeguard the family interests and thus, the family's members, just as the ruler of society and the legal protectors (*Qadi*) have the authority to safeguard the interests of the community, thus preventing or deterring acts that fall outside the realms of fixed punishments in *al-hudud* and *al-Qisas*.<sup>70</sup>

El-Awa presents another Qur'anic verse, 42:40, which is more directly related to *ta'zir*. The first part of the verse proclaims the general principle : "The recompense of an evil is a like evil.....[sic]"<sup>71</sup> He argues that this verse establishes the legal rule for treating any misconduct, suggesting that the punishment is to be equivalent in reciprocation to the active offence. The 'equality' indicates the maximum level of the penalty to deliver, as opposed to a minimum, and this is guaranteed at the end of the verse which states : "But if a person forgives and makes reconciliation, his reward is due from God....."<sup>72</sup>

El-Awa argues that this verse is applicable for the defence of *ta'zir*, and its origin, as it informs the community that the person liable for a *ta'zir* punishment has acted in a way that is evil to either/both an individual or society. Thus, the punishment can be justified by this verse, together with the other two verses mentioned.<sup>73</sup> Accordingly, it cannot be said that the Qur'an does not acknowledge this form of punishment. On the contrary, the Qur'an has laid down the principle from which the *ta'zir* punishment is deduced. Thus, in paying attention to the above Qur'anic verses, it can be accepted that the legal principles of *ta'zir* are expressed within the Qur'an, either implicitly, or explicitly.<sup>74</sup>

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'Abdullah bin Zam'a on *e:\Islamica\bukhari\bukhari.tex* on CD Rom *Islamica : Digital Library of Islamic Software*, Op.Cit.,

<sup>70</sup> El-Awa, Mohammad Selim, *Punishment in Islamic Law*, op.cit., p98, also see Mohammad Iqbal Siddiqi, op.cit., p160-161

<sup>71</sup> El-Awa, Mohammad Selim, *ibid.*, p98. The verse is also cited as "The recompense of an injury is an injury equal thereto (in degree):" (42:40) Abdullah Yusuf Ali, in *The Holy Qur'an*, *Ibid.*, Vol. III, p1317

<sup>72</sup> El-Awa, Mohammad Selim, *Punishment in Islamic Law*, *Ibid.*, p98. The verse ending is also cited as "But if a person forgives and makes reconciliation his reward is due from Allah: for (Allah) loveth not those who do wrong." (42:40), Abdullah Yusuf Ali, in *The Holy Qur'an*, *Ibid.*, Vol. III, p1317-1318

<sup>73</sup> El-Awa, Mohammad Selim, *Punishment in Islamic Law*, *Ibid.*, p98

<sup>74</sup> El-Awa, Mohammad Selim, *ibid.*, p98, also see Mohammad Iqbal Siddiqi, op.cit., p161

Having stated that *ta'zir* is not strongly reported in the Sunna, Ibn Qayyim has emphasised how the reference to *ta'zir* that occurs in the Sunna aided to establish the Islamic penal system, especially those references that are related to the acts of Hadrat 'Umar, a Companion of the Prophet Muhammad. Ibn Qayyim does declare though, that these decisions are, in turn, based on the sayings and practice of the Prophet himself.<sup>75</sup> Examples of such *hadith* used to install an established legal code, include one that refers to the Companion of the Prophet who injured one of his slaves during some punishment. The slave had engaged in a sexual relationship with a female slave.<sup>76</sup> When the Prophet heard the injured slave's defence of the case, the Prophet freed the slave in a form of punishment to the Companion's misconduct of inflicting inappropriate injuries.<sup>77</sup>

Ibn Qayyim also mentions that both Muslim and Abu Da'ud transmit a *hadith* where the Prophet denied a soldier of his share of the 'booty' or 'spoils of war,' due to the individual's misdeed committed against a commander of the army.<sup>78</sup> Some of the Muslims of Medina who had not followed the Prophet to support him during the battle of Tabuk, included Ka'b bin Malik, Murarah bin al-Rabi' Amri and Hilal bin Umayya.<sup>79</sup> When the Prophet returned to Medina after the battle, the three men said that they were fully aware that there were no genuine reasons for them to have stayed behind and not joined the campaign. As a result, the Prophet demanded that all other Muslims should avoid any contact with the guilty three and their wives would not be allowed to share the same beds. Fifty days after this incident, a Qur'anic verse 9: 118 was revealed,<sup>80</sup> proclaiming that Allah had forgiven the three and accepted their

<sup>75</sup> Ibn Qayyim, al-Jawziya, Muhammad b. Abi Bakr, *Ighathat al-Lahfan Min Masayed al-Shytan*, Cairo, 1939, Vol.I, p333 and Shalabi, Shaikh Muhammad Mustafa, *Ta'lil al-Ahkam*, Al-Azhar University Press, Cairo, 1949, p60-61

<sup>76</sup> El-Awa states that this *hadith* is cited by Ahmad b. Hanbal, Abu Da'ud and Ibn Majah; El-Awa, *Ibid.*, footnote 15, p120

<sup>77</sup> Ibn Qayyim, al-Jawziya, Muhammad b. Abi Bakr, *Ighathat al-Lahfan*, *Ibid.*, Vol.I, p332-333,

<sup>78</sup> Ibn Qayyim, al-Jawziya, Muhammad b. Abi Bakr, *I'lam al-Muwaqq'in*, Cairo, 1955, Vol.II, p98

<sup>79</sup> The names of the three guilty are given by both El-Awa, Mohammad Selim, *Punishment in Islamic Law*, *Ibid.*, p99 and Tahir-ul-Qadri, Muhammad, *Islamic Penal System and Philosophy*, op.cit., p429 and p431

<sup>80</sup> "And God also turned in Mercy to the other three, whom the Prophet had allowed to remain in Medina. They had made feeble excuses for themselves in order to escape the call to arms, and, as a result, the rest of the townspeople had made their lives such a misery that they felt the whole world, for all its vastness, closing in on them; in their souls, too, they had a feeling of constraint. And they saw that the only refuge they had from God was God Himself. And so once they had turned to Him, He turned to them in His Mercy; and when He had turned to them, the townspeople who had ostracized them took them back into the fold and forgave them. For God is Merciful and always turns to those who turn to Him." *Al-Tawba*, 9:118, Turner, Colin, *The Quran : A New Interpretation*, op.cit., p117



repentance. El-Awa suggests that “This Prophetic order to avoid and ignore the men was a *ta’zir* punishment imposed upon them for their failure to respond to the call to arms.”<sup>81</sup>

Another prominent example of *hadith* that is given in reference to *ta’zir* punishment, is that act of theft that is not covered within the category of theft that is defined as a *hadd* with a designated Qur’anic punishment. This situation is covered with *hadith* that describes the theft of fruit, when the value of the fruit is less than that which incurs the *hadd* to be applied. In such a theft, of a lower value, the Prophet has specifically pointed out that the convicted thief, stealing from an unprotected place, must pay “double its value and be liable to punishment.”<sup>82</sup>

Some Muslim jurists argue that the phrase ‘double value’ is where the form of *ta’zir* is found.<sup>83</sup> A more obvious reference to *ta’zir*, can be found in the final clause of the *hadith*, where it expresses that the convicted thief will ‘be liable to punishment.’ Thus, this places any kind of judgement and the amount of it to be received, will be under the discretion of the relevant *qadi* dealing with the given case.<sup>84</sup> *Ta’zir* crimes may well be of the same nature as those crimes held as *hudud*, but would not be as serious an act to then be classified as a *hadd* offence. *Ta’zir* crimes and offences can be given the simple label as being ‘transgressions.’<sup>85</sup> The judge has the role of determining the applicable punishment, and with ‘transgressions,’ it is believed that the judge has actually got to clarify the offence committed as well. However, to

<sup>81</sup> El-Awa, Mohammad Selim, *Punishment in Islamic Law*, op.cit., p99. El-Awa also cites Ibn Qayyim, al-Jawziya, Muhammad b. Abi Bakr, *Ighathat al-Lahfan*, op.cit., Vol.I, p332, (El-Awa, op.cit., in footnote 18, p99 and p120) and both Siddiqi and El-Awa also cite Ibn Qayyim, al-Jawziya, Muhammad b. Abi Bakr, *Zad al-Ma’ad*, Cairo, 1379AH, Vol.III, p11-13, (Siddiqi, Ibid., footnote 3, p162 and El-Awa, Ibid., footnote 18, p99 and p120) also see also see Tahir-ul-Qadri, Muhammad, *Islamic Penal System*, p431; Tahir-ul-Qadri also cites Ibn Taymiyya, Ahmad ‘Abd al-Halim b. Majd al-Din, *al-Siyasa’ al-Shari’iya*, Cairo, 1952, p120-121, (Tahir-ul-Qadri, Ibid., footnote 207, p467)

<sup>82</sup> El-Awa, Mohammad Selim, *Punishment in Islamic Law*, Ibid., p99. Also see Mohammad Iqbal Siddiqi, Ibid., p163 and also see Ibn Taymiyya, Shaykh al-Islam Imam Taqi al-Din Ahmad, *al-Hisba fi al-Islam*, (no date given), translated version, entitled *Public Duties in Islam : The Institution of the Hisba*, 1982, Translated by Muhtar Holland, The Islamic Foundation, Leicester, England, p62

<sup>83</sup> El-Awa, Mohammad Selim, *Punishment in Islamic Law*, Ibid., p99, also see Mohammad Iqbal Siddiqi, Ibid., p163

<sup>84</sup> El-Awa, Mohammad Selim, *Punishment in Islamic Law*, Ibid., p99, also see Mohammad Iqbal Siddiqi, Ibid., p163. Both Siddiqi and El-Awa also cite Tabrizi, Wali al-Din Muhammad b. ‘Abd Allah, *Mishkat al-Masabih*, with the commentary of Albani, Damascus, 1961, Vol.II, p146, (Siddiqi, Ibid., footnote 1, p163 and El-Awa, Ibid., footnote 19, p99 and p120)

<sup>85</sup> El-Awa, Mohamed Selim, *Punishment in Islamic Law : A Comparative Study*, Ibid., p111, also see Siddiqi, Muhammad Iqbal, *The Penal Law of Islam*, Ibid., p176-177. El-Awa also cites Qarafi, Shihab al-Din al-‘Abbas b.Ahmad, *Kitab al-Furuq al-Saniya*, Ibid, Vol.IV, p182, (El-Awa, footnote 89, Ibid., p111, p122)

establish that this view is wrong, the very definition of *ta'zir* as a punishment for transgression against God or a person, where there is no set *hadd* punishment or *kaffarah* needs to be clearly re-defined. Therefore, the right to determine what will be classified as a 'transgression' and what will *not* be classified as such, is reserved for God alone, as Muslims hold *shari'ah* as the final statement of God's rules and authority, over humans.<sup>86</sup> This point is important to be raised, as the hypothesis of this thesis seeks to establish that the acts of blasphemy (*al-sabb*) and apostasy fall within this very definition of judgement. The thesis intends to emphasise that these acts are theological sins, as opposed to being practical crimes. Another statement made by the Prophet relates to the legitimate punishment if somebody refuses to pay the *zakat*. Both Siddiqi and El-Awa quote this saying as :

Whoever gives it will be rewarded by Allah, and who refuses to give it, it will be taken from him: and we will take one-half of his property, not for Muhammad or his family, but for the *Bayt al-Mal* (State Treasury).<sup>87</sup>

Thus, the fining imposed upon the offender, is a form of *ta'zir* punishment. Within the Qur'an it is stated clearly that if someone in debt is in further financial difficulties, then the creditor must give the debtor more time to be able to re-pay the loan. However, if a rich person refuses to pay the bills, the Prophet declared that he should be punished. The important point to be raised from the *hadith* that relates this information, is that the Prophet did not state any specific kind of punishment to be implemented upon the offender, or the amount to be paid in a fine.<sup>88</sup> This general position is necessary to be maintained, so that the circumstances of the different positions of the debtor and the one who is owed the money, can be taken into

<sup>86</sup> El-Awa, Mohamed Selim, *ibid.*, p111. Also see Siddiqi, Muhammad Iqbal, *The Penal Law of Islam*, *ibid.*, p177. Both El-Awa and Siddiqi cite : Shalabi, Shaikh Muhammad Mustafa, *Al-Fiqh Al-Islami Bayn al-Mithaliya al-Waqi'ya*, Alexandria, 1960, p42; (El-Awa, footnote 90, *ibid.*, p111, p122 and Siddiqi footnote 1, *ibid.*, p177)

<sup>87</sup> El-Awa, Mohammad Selim, *Punishment in Islamic Law*, *ibid.*, p100, also see Mohammad Iqbal Siddiqi, *ibid.*, p163. Both Siddiqi and El-Awa also cite Ibn Qayyim, al-Jawziya, Muhammad b. Abi Bakr, *Ighathat al-Lahfan*, Op.cit., Vol.I, p331, (Siddiqi, *ibid.*, footnote 2, p163 and El-Awa, *ibid.*, footnote 20, p100 and p120)

<sup>88</sup> El-Awa, Mohammad Selim, *Punishment in Islamic Law*, *ibid.*, p100, also see Mohammad Iqbal Siddiqi, *ibid.*, p164. Both Siddiqi and El-Awa also cite Tabrizi, Wali al-Din Muhammad b. 'Abd Allah, *Mishkat al-Masabih*, Op.Cit., Vol.II, p112, (Siddiqi, *ibid.*, footnote 1, p164 and El-Awa, *ibid.*, footnote 21, p100 and p120)



consideration. “What is important, however, is that this *hadith*, does exemplify a case in which the Prophet ordered a *ta’zir* punishment.”<sup>89</sup>

It has become clear that *ta’zir* punishment is based on Qur’anic verses and *hadith* traditions, both of which have been referred to above. While this penal system of punishment was developed by the juristic schools of law at a comparatively later date than the origin of its sources, it is still clear that it has been mentioned in the Qur’an and the Sunna. However, despite its appearance in certain verses, here is another example for the existence of definite inconsistency and disagreement in the opinions of Muslim jurists and scholars on this issue. As can be found in the work of some scholars, they argue that there is no reference to *ta’zir* in the Qur’an, and also suggest that *ta’zir* has *not* been reported in the Sunna.<sup>90</sup>

### **1.3.1. Different forms of *ta’zir* – تعزير punishment.**

*Ta’zir*, unlike the forms of *hadd* and *qisas* punishment, does not have specific punishments, that are pre-determined. When dealing with the form of crimes that fall within the category of punishment by *ta’zir* the *qadi* has a wide range of potential sentences that he select from, once he has assessed the accused person’s circumstances that led to the crime, any criminal record and the criminal’s psychological setting that may have influenced such action.<sup>91</sup> The level of authority given to the *qadi* restricts the breadth of punishments that may be delivered. No judge is entitled to issue a sentence that is not recognised or seen as acceptable within Islamic Law. An example here is given by ‘Abd al-Qadir ‘Uda, in his work *Al-Tashri’ al-Jina’i al-Islami Muqaranan bi al-Qur’an al-wad’l*, where he states that no judge may issue that a criminal will be whipped while they are naked.<sup>92</sup>

<sup>89</sup> El-Awa, Mohammad Selim, *Punishment in Islamic Law*, Ibid., p100, also see Mohammad Iqbal Siddiqi, Ibid., p164

<sup>90</sup> El-Awa, Mohammad Selim, *Punishment in Islamic Law*, Ibid., p100, also see Mohammad Iqbal Siddiqi, Ibid., p164. El-Awa indicates the reader can “Compare the article on *Ta’zir* in *The Encyclopedia of Islam*, Vol.IV,” to follow the arguments that are presented, El-Awa, Ibid., footnote 23, p120

<sup>91</sup> El-Awa, Mohammad Selim, *Punishment in Islamic Law*, Ibid., p100, also see Mohammad Iqbal Siddiqi, Ibid., p164-165. El-Awa cites ‘Uda, ‘Abd al-Qadir, *Al-Tashri’ al-Jina’i al-Islami Muqaranan bi al-Qur’an al-wad’l*, Cairo, 1959, Vol. I, p685-708. Both Siddiqi and El-Awa also cite Ibn Nujaym, Zayn al-‘Abidin Ibrahim, *Al-Bahr al-Ra’iq Sharh Kanz al-Daqa’iq*, Cairo, no date given, Vol.V, p44, (Siddiqi, Ibid., footnote 1, p165 and El-Awa, Ibid., footnote 24, p100 and p120)

<sup>92</sup> El-Awa, Mohammad Selim, *Punishment in Islamic Law*, Ibid., p100, also see Mohammad Iqbal Siddiqi, Ibid., p165. El-Awa cites ‘Uda, ‘Abd al-Qadir, *Al-Tashri’ al-Jina’i al-Islami Muqaranan bi al-Qur’an al-wad’l*, Ibid., p143, (El-Awa, Ibid., footnote 25, p100 and p120)

As the selection of punishments by *ta'zir* are so vast and very broad in their potential, it could not be possible to cover them all in any detail within this present research. The most important crimes and how they are dealt with, will now be briefly mentioned, to offer the scope of what capacity *ta'zir* holds, but this list below cannot be exclusive in relevant crimes and punishments available. Any punishment which serves the role of *ta'zir*, so as to prevent further crimes being committed and reform the individual or group of offenders involved, is acceptable, as long as the punishment does not contradict the general principle of Islamic law. The following list of the main punishments delivered, is based on what is found used in the traditional legal texts and what has been practiced in courts, but other useful punishments may also be legally implemented.<sup>93</sup>

One key factor involving *ta'zir* and the *qadi*'s role in sentencing, is that apart from the discretion of what punishment they feel should be delivered, the *qadi* has also to determine whether the act had been criminal one or not. They are obliged to make this decision, as *ta'zir* is defined as a punishment for 'any transgression.' As 'transgressions' cannot be anticipated, the rights to ascertain what is to be prevented and then to deliver such relevant punishment that will aim towards protecting society, these roles are provided to the *qadi*.<sup>94</sup> One important point here, is keeping in mind that any form of 'unbelief' is the transgression away from '*iman* (faith). With this being the case, it offers further support that both blasphemy and apostasy, being the transgression of faith, should be punished under *ta'zir*, to allow the *qadi* to be able to assess each case with their own discretion. This will allow the *qadi* to analyse the individual circumstances that surround each apostate's reasons for changing their religious belief, and whether the act was passive apostasy, or involved *al-baghi* (treason or sedition.)

The two forms of *ta'zir* punishment in flogging and the death penalty will be covered in detail, as they relate to the punishment for those accused apostates. The penalty of

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<sup>93</sup> El-Awa, Mohammad Selim, *Punishment in Islamic Law*, Ibid., p100. El-Awa cites 'Uda, 'Abd al-Qadir, *Al-Tashri' al-Jina'i al-Islami Muqaranan bi al-Qur'an al-wad'l*, Ibid., p687, (El-Awa, Ibid., footnote 26, p101 and p120)



flogging is relevant to mention, as it will also present a further inconsistency between the different schools of law in how they differ in accepting what is the correct minimum number of whips to deliver as a sentence. The other forms of penalties provided in *ta'zir* will present the use of discretion by the *qadi*.

One main form of punishment in *ta'zir* is 'admonition' (الوعظ – *al-wa'z*). This is the act where someone reminds or informs another that the act of transgression they had just committed, was illegal. The purpose of admonition is to bring to immediate attention that the transgressor's behaviour is unacceptable to the whole community.<sup>95</sup> Admonition is restricted to those who commit very minor offences, normally for the first time and while they were potentially unaware of the wrong doing. However, it is under the *qadi*'s discretion, when assessing the accused, whether or not they will be able to be restrained from re-enacting the transgression in the future and whether they may easily become reformed in their character.<sup>96</sup>

Another form of *ta'zir* punishment is that of 'reprimand' (التوبيخ – *al-tawbikh*). This may be given through either verbal or physical acts that the *qadi* feels will suffice to serve as the recognisable penalty. The *qadi* would tend to use very specific terminology and acts, to enhance the reprimand that is made. The way the accused is treated depends on both the actual crime committed and their own behaviour.<sup>97</sup> Such an action which led the Prophet to use this reprimand reaction as an efficient punishment is recorded in the *hadith*. A Companion of the Prophet, 'Abdur Rehman [sic] bin 'Auf, was very annoyed with one of his slaves and abused him with offensive

<sup>94</sup> El-Awa, Mohammad Selim, *Punishment in Islamic Law*, Ibid., p100. El-Awa cites Qarafi, Shihab al-Din al-'Abbas b.Ahmad, *Kitab al-Furuq al-Saniya*, Cairo, 1939, Vol.IV, p179-180, (El-Awa, Ibid., footnote 27, p101 and p120)

<sup>95</sup> El-Awa, Mohammad Selim, *Punishment in Islamic Law*, Ibid., p101, also see Mohammad Iqbal Siddiqi, Ibid., p165. Both Siddiqi and El-Awa also cite 'Amer, 'Abd al-'Aziz, *Al-Ta'zir fil-Shari'a al-Islamiya*, third edition, Cairo, 1957, p369, (Siddiqi, Ibid., footnote 2, p165 and El-Awa, Ibid., footnote 28, p101 and p120). Also see Tahir-ul-Qadri, Muhammad, *Islamic Penal System*, op.cit., p429

<sup>96</sup> El-Awa, Mohammad Selim, *Punishment in Islamic Law*, Ibid., p101, also see Mohammad Iqbal Siddiqi, Ibid., p166, also see Tahir-ul-Qadri, Muhammad, *Islamic Penal System and Philosophy*, op.cit., p429; It is very interesting to note that all three authors - El-Awa, Siddiqi and Tahir-ul-Qadri, also cite : 'Uda, 'Abd al-Qadir, *Al-Tashri' al-Jina'i al-Islami Muqaranan bi al-Qur'an al-wad'l*, op.cit., Vol.I, p702, (El-Awa, Ibid., footnote 29, p101 and p120; Siddiqi, Ibid., footnote 1, p166 and Tahir-ul-Qadri, *Islamic Penal System and Philosophy*, Ibid., footnote 202, p429 and p467)

<sup>97</sup> El-Awa, Mohammad Selim, Ibid., p101, also see Mohammad Iqbal Siddiqi, Ibid., p166, also see Tahir-ul-Qadri, Muhammad, *Islamic Penal System*, Ibid., p429-430; Both Siddiqi and El-Awa also cite Tabrizi, Wali al-Din Muhammad b. 'Abd Allah, *Mishkat al-Masabih*, Op.Cit., Vol.II, p586, (Siddiqi, Ibid., footnote 2, p166 and El-Awa, Ibid., footnote 30, p101 and p120)



language stating “O, son of black!” The Prophet was outraged by such a comment and stated “There is no such right available to the son of a white person over the son of a black person.” ‘Abdur Rehman [sic] bin ‘Auf was completely ashamed of his act and comment. He rubbed his cheek onto the ground and said to the slave “You keep rubbing the soil onto my cheek ‘till you are satisfied.”<sup>98</sup>

A further form of *ta’zir* punishment is that of ‘threat’ (*al-tahdid* – التهديد) which holds the purpose of persuading a convicted offender to be inhibited from acting as a criminal in the future, due to being in fear of the punishments that they would then receive. This may involve threatening the convict with severe punishment if they were to repeat the crime or delivering a suspended sentence of a given time period, which will be delayed until they re-commit an offence. ‘Abd al-Qadir ‘Uda raises the point that what is found important in this form of *ta’zir* is that it portrays protection for the society, but the threat must be genuinely intended. The threats may be named as the penalty of flogging, imprisonment or other forms.<sup>99</sup>

A further form of punishment is that to ‘boycott’ (*al-hajr* – الهجر). This form of *ta’zir* is validated by the Qur’an, in the same verse as that mentioned under the *ta’zir* of ‘admonition’ (*al-wa’z*), from *an-nisa*, 4:34 as : “Refuse to share their beds.”<sup>100</sup> Ahmad ‘Abd al-Halim b. Majd al-Din Ibn Taymiyya, in his work *al-siyasa’ al-Shari’iya*, suggests that this was the punishment that was also implemented upon the Muslims of Medina who had not followed the Prophet to support him during the battle of Tabuk, as mentioned above, under ‘admonition’ (*al-wa’z*).<sup>101</sup> The Caliph ‘Umar is

<sup>98</sup> El-Awa, Mohammad Selim, *Punishment in Islamic Law*, Ibid., p101, also see Tahir-ul-Qadri, Muhammad, *Islamic Penal System*, Ibid., p429; Tahir-ul-Qadri also cites : ‘Uda, ‘Abd al-Qadir, *Al-Tashri’ al-Jina’i al-Islami Muqaranan bi al-Qur’an al-wad’l*, Op.Cit., Vol.I, p703, (Tahir-ul-Qadri, *Islamic Penal System*, Ibid., footnote 203, p430 and p467)

<sup>99</sup> El-Awa, Mohammad Selim, *Punishment in Islamic Law*, Ibid., p101-102, also see Mohammad Iqbal Siddiqi, Ibid., p166, also see Tahir-ul-Qadri, Muhammad, *Islamic Penal System and Philosophy*, Ibid., p430; All three authors - El-Awa; Siddiqi and Tahir-ul-Qadri also cite : ‘Uda, ‘Abd al-Qadir, *Al-Tashri’ al-Jina’i al-Islami Muqaranan bi al-Qur’an al-wad’l*, Op.Cit., Vol.I, p703, (El-Awa, Ibid., footnote 31, p102 and p120; Siddiqi, Ibid., footnote 3, p166 and Tahir-ul-Qadri, *Islamic Penal System and Philosophy*, Ibid., footnote 205, p430 and p467)

<sup>100</sup> Tahir-ul-Qadri, Muhammad, *Islamic Penal System and Philosophy*, Ibid., p431, and see El-Awa, Mohammad Selim, *Punishment in Islamic Law*, Ibid., p102; Tahir-ul-Qadri translates this part of the verse as “Keep them off your beds,” Tahir-ul-Qadri, *Islamic Penal System and Philosophy*, Ibid., p431

<sup>101</sup> El-Awa, Mohammad Selim, *Punishment in Islamic Law*, Ibid., p102, also see Mohammad Iqbal Siddiqi, Ibid., p166-167, also see Tahir-ul-Qadri, Muhammad, *Islamic Penal System and Philosophy*, Ibid., p431; All three authors - El-Awa, Siddiqi and Tahir-ul-Qadri also cite : Ibn Taymiyya , Ahmad ‘Abd al-Halim b. Majd al-Din, *al-Siyasa’ al-Shari’iya*, Cairo, 1952, p120-121, (El-Awa, Ibid., footnote



also recorded to have used this punishment, particularly with a man who used to deliberately question difficult terminology in the Qur'an, in order to confuse people.<sup>102</sup>

'Abd al-'Aziz 'Amer, in his work *al-ta'zir fil-shari'a al-Islamiya*, argues that to 'boycott' a criminal is not very practical in modern times, as a penalty. He suggests that it used to be based on a 'powerful religious feeling among people, that no longer exists.' However, those defending this form of punishment claim that it can be used in a way of preventing the accused communicating with anyone else, although this can be interpreted as a form of imprisonment, rather than the intended 'boycott.'<sup>103</sup>

Added to this form, in order to prevent the repetition of crimes occurring in the community, and to impose adequate shame on the accused, is the *ta'zir* form of 'public disclosure' ( *al-tashhir* – التّشهير ) of their behaviour. This form of *ta'zir* has been present since the very early stages of Islam, and intends to create a 'stigmatising' effect on the convicted. It has been recorded that the Prophet, by means of *al-tashhir*, punished a *zakat* tax collector who had divided his *zakat* collections into two parts. He gave one part to the Prophet for the *Bayt-ul-Mal* and kept the other part, claiming that it had been given to him by the people, as a personal present. The Prophet is recorded to have addressed the community by stating :

I have appointed one of you to do some public services; afterwards he divided what he had collected into two portions: one for the public treasury and the other for himself. If the appointed man had stayed in his father's or his mother's home, would anyone have given him a gift or not?<sup>104</sup>

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33, p102 and p120; Siddiqi, Ibid., footnote 1, p167 and Tahir-ul-Qadri, *Islamic Penal System and Philosophy*, Ibid., footnote 207, p431 and p467)

<sup>102</sup> El-Awa, Mohammad Selim, *Punishment in Islamic Law*, Ibid., p102, also see Mohammad Iqbal Siddiqi, Ibid., p167, also see Tahir-ul-Qadri, Muhammad, *Islamic Penal System and Philosophy*, Ibid., p431-432; Both El-Awa and Siddiqi cite : Ibn Farhun, Ibrahim Shams al-Din Muhammad, *Tabsirat al-Hukkam*, Op.Cit., p202, (El-Awa, Ibid., footnote 34, p102 and p120; Siddiqi, Ibid., footnote 2, p167; Tahir-ul-Qadri cites : 'Uda, 'Abd al-Qadir, *Al-Tashri' al-Jina'i al-Islami Muqaranan bi al-Qur'an al-wad'i*, Op.Cit., Vol.I, p702, (Tahir-ul-Qadri, Ibid., footnote 210, p467)

<sup>103</sup> El-Awa, Mohammad Selim, *Punishment in Islamic Law*, Ibid., p102. El-Awa cites 'Amer, 'Abd al-'Aziz, *Al-Ta'zir fil-Shari'a al-Islamiya*, Op.Cit., p375, (El-Awa, Ibid., footnote 35, p102 and p120)

<sup>104</sup> El-Awa, Mohammad Selim, *Punishment in Islamic Law*, Ibid., p102-103, also see Mohammad Iqbal Siddiqi, Ibid., p167, also see Tahir-ul-Qadri, Muhammad, *Islamic Penal System and Philosophy*, Ibid., p432; All three authors - El-Awa, Siddiqi and Tahir-ul-Qadri also cite : Tabrizi, Wali al-Din Muhammad b. 'Abd Allah, *Mishkat al-Masabih*, Op.Cit., Vol.I, p560, (Siddiqi, Ibid., footnote 3, p167 and El-Awa, Ibid., footnote 36, p103 and p120 Tahir-ul-Qadri, Ibid., footnote 212, p432 and p467)

Muhammad bin Sahl Sarakhsi, in his work *Mabsut*, mentions that it has also been recorded that Shurayh, a renowned *qadi* who served under both Caliph's Hadrat 'Umar and Hadrat 'Ali, reinforced the fact that if a witness in a court-case was found to be a liar, they would be publicly identified and humiliated, by being paraded through the streets. The humiliation would go to the extent that nobody would trust them from then on.<sup>105</sup> All the jurists of each school in Islamic law are agreed on this position.<sup>106</sup>

The parading of the convict in various parts of the city, to publicly proclaim that they have received *ta'zir* punishment, is not done physically in modern times. It is far more likely for this treatment to be dealt with in a newspaper, publishing the court-case details with the judgements made to named offenders involved, or perhaps either on television or over the radio. Although this is a penalty for the act of untrustworthy acts, it may also be used for the crimes of a similar nature, depending on the judge's discretion. It is also an important point to note that 'public disclosure' is an additional punishment, as the jurists normally prescribe the sentences of flogging or imprisonment, and then proceed with informing the public.<sup>107</sup>

Another form of *ta'zir* punishment relates to pecuniary fines and the possible confiscation of property of the accused, (*al-Gharamah* – الغرامة – *wal-Musadarah*).

As stated earlier, financial payments were introduced by the Prophet Muhammad, as a form of punishment. As this crime involving money has no relevance to the main theme of this research it will not be covered here.

A more harsh form of *ta'zir* punishment is that of Imprisonment (*al-habs* - الحبس).

There are two forms of imprisonment prescribed in *Shari'a* as a penalty for both *hudud* and *ta'zir* crimes. The two forms are imprisonment as either for a specifically named time period, or for an unlimited period of imprisonment. The initial form of

<sup>105</sup> El-Awa, Mohammad Selim, *Punishment in Islamic Law*, Ibid., p103, also see Mohammad Iqbal Siddiqi, Ibid., p167-168, also see Tahir-ul-Qadri, Muhammad, *Islamic Penal System and Philosophy*, Ibid., p432; All three authors - El-Awa, Siddiqi and Tahir-ul-Qadri also cite : Sarakhsi, Muhammad b. Sahl (called Abu Bakr), *Mabsut*, Cairo, 1342AH, Vol.16, p145, (Siddiqi, Ibid., footnote 4, p167 and El-Awa, Ibid., footnote 37, p103 and p120 Tahir-ul-Qadri, Ibid., footnote 213, p432 and p468)

<sup>106</sup> El-Awa, Mohammad Selim, Ibid., p103, also see Mohammad Iqbal Siddiqi, Ibid., p167. El-Awa also cites Shirbini, Muhammad al-Khatib, *Mughni al-Muhtaj*, Op.Cit., Vol.IV, p178 and both El-Awa and Siddiqi cite from : Ibn Farhun, Ibrahim Shams al-Din Muhammad, *Tabsirat al-Hukkam*, Op.Cit., Vol.II, p214, (El-Awa, Ibid., footnote 38, p103 and p121; Siddiqi, Ibid., footnote 5, p167)

<sup>107</sup> El-Awa, Mohammad Selim, Ibid., p103



imprisonment may be used on minor offences as the *qadi* normally prefers flogging for the more dangerous, major *ta'zir* offences.<sup>108</sup> The minimum period of imprisonment is agreed upon as one day.<sup>109</sup> There is a difference of opinion amongst the school's of *fiqh* on the minimum period of imprisonment. The Maliki, Hanafi and Hanbali schools do not fix a maximum period of time for *ta'zir* imprisonment, as the penalty varies for each offence and with each individual circumstances involved.<sup>110</sup> According to the Shafi'i school the maximum period of imprisonment is one month during an investigation and can be at least six months for the penalty and up to one year imprisonment. They base this view on the analogy (*qiyas*) for the punishment for *zina* (adultery/illegal fornication) by an unmarried person.<sup>111</sup>

Banishment for adultery is stated as being for one year. The Shafi'i school hold *zina* as a *hadd* crime, thus the *ta'zir* punishment must not last more than the *hadd* penalty.<sup>112</sup> However, other Shafi'i jurists hold another view, which compares with the view held by the other three schools. Therefore, although there is disagreement within the same school of law, the opinion held by the majority is that the judge has the freedom of discretion to decide the maximum penalty of imprisonment that the convicted will be sentenced. All the schools of *fiqh*, hold the view that imprisonment is an additional penalty offered with another, which depends entirely on the situation

<sup>108</sup> El-Awa, Mohammad Selim, *Punishment in Islamic Law*, Ibid., p105, also see Mohammad Iqbal Siddiqi, Ibid., p170; El-Awa cites : 'Uda, 'Abd al-Qadir, *Al-Tashri' al-Jina'i al-Islami Muqaranan bi al-Qur'an al-wad'l*, Op.Cit., Vol.I, p694, (El-Awa, Ibid., footnote 50, p105 and p121)

<sup>109</sup> El-Awa, Mohammad Selim, *Punishment in Islamic Law*, Ibid., p105, also see Mohammad Iqbal Siddiqi, Ibid., p170, also see Tahir-ul-Qadri, Muhammad, *Islamic Penal System and Philosophy*, Ibid., p434; All three authors - El-Awa, Siddiqi and Tahir-ul-Qadri also cite : Ibn Qudamah, 'Abd Allah bin Ahmad bin Muhammad, *Al-Mughni*, Cairo, al-Manar (ed.), no date given, (although El-Awa states that another edition is dated as 1969; El-Awa, Ibid. p142), Vol. X, p347-348, (El-Awa, Ibid., footnote 51, p101 and p121; Siddiqi, Ibid., footnote 2, p170 and Tahir-ul-Qadri, *Islamic Penal System and Philosophy*, Ibid., footnote 221, p435 and p468) El-Awa also cites : Ibn Farhun, Ibrahim Shams al-Din Muhammad, *Tabsirat al-Hukkam*, Op.Cit., p225, (El-Awa, Ibid., footnote 51, p105 and p121)

<sup>110</sup> El-Awa, Mohammad Selim, *Punishment in Islamic Law*, Ibid., p105, also see Mohammad Iqbal Siddiqi, Ibid., p170-171; both El-Awa and Siddiqi cite Abu Ya'la, Muhammad bin al-Husain al-Farra', *Al-Ahkam al-Sultaniya*, Cairo, 1357AH / 1938AD, p263 (El-Awa, Ibid., footnote 52, p105 and p121; Siddiqi, Ibid., footnote 1, p171) El-Awa also cites : Ibn Farhun, Ibrahim Shams al-Din Muhammad, *Tabsirat al-Hukkam*, Op.Cit., no page given, (El-Awa, Ibid., footnote 52, p105 and p121)

<sup>111</sup> El-Awa, Mohammad Selim, *Punishment in Islamic Law*, Ibid., p105, also see Mohammad Iqbal Siddiqi, Ibid., p171, also see Tahir-ul-Qadri, Muhammad, *Islamic Penal System and Philosophy*, Ibid., p435

<sup>112</sup> El-Awa, Mohammad Selim, *Punishment in Islamic Law*, Ibid., p105, also see Mohammad Iqbal Siddiqi, Ibid., p170-171; El-Awa also cites : Ibn Farhun, Ibrahim Shams al-Din Muhammad, *Tabsirat al-Hukkam*, Ibid., p225, and cites 'Uda, 'Abd al-Qadir, *Al-Tashri' al-Jina'i al-Islami Muqaranan bi al-Qur'an al-wad'l*, op.cit., p694-695 and also 'Amer, 'Abd al-'Aziz, *Al-Ta'zir fil-Shari'a al-Islamiya*, op.cit., p309-310 (El-Awa, Ibid., footnote 53, p105 and p121)



of the crime committed.<sup>113</sup> Imprisonment for an unlimited period of time is imposed on habitual offenders, whom the judge decides as not having the capacity to reform their character of behaviour through other forms of punishment. This punishment can last until the criminal eventually genuinely repents or otherwise until their death, if they are categorised as dangerous criminals.<sup>114</sup>

This form of punishment is very similar to that given for armed robbery (*hiraba*),<sup>115</sup> which is a recognised *hadd* crime. This has the penalty of banishment, thus imprisonment imposed on the convicted offender/s until they repent or die in prison. The unlimited imprisonment time-scale as a *ta'zir*, can only be justified in this case of *hiraba*, under the condition that it is believed the convicted cannot be reformed under any other penalty.<sup>116</sup> Tahir-ul-Qadri states that the punishment of imprisonment has been mentioned within the Qur'an and Sunna under various words, such as *al-habs*, *an-nafy*, *al-Imsak*, *al-'azl*, and *al-taghrīb*. Also, within Surah *Yusuf*, 12, in several verses.<sup>117</sup>

Apart from the crime of *zina*, *al-naḥī* (banishment) or imprisonment is imposed as a *ta'zir* on those whose offences may be seen to encourage other members of the community to imitate such illegal behaviour.<sup>118</sup> 'Banishment' may have been implemented as the refusal of an offender's entrance into one city in the same country or the banishment from entry to the offender's country of origin, or residence. However, El-Awa points out that the former does not remove the possible imitation of

<sup>113</sup> El-Awa, Mohammad Selim, *Punishment in Islamic Law*, Ibid., p105, also see Mohammad Iqbal Siddiqi, Ibid., p171, also see Tahir-ul-Qadri, Muhammad, *Islamic Penal System and Philosophy*, Ibid., p435;

All three; El-Awa; Siddiqi and Tahir-ul-Qadri also cite : Ibn Humam, Kamal al-Din Muhammad, *Fath al-Qadir*, Op.Cit., Vol.IV, p216 (El-Awa, Ibid., footnote 55, p105 and p121; Siddiqi, Ibid., footnote 2, p171 and Tahir-ul-Qadri, *Islamic Penal System and Philosophy*, Ibid., footnote 221, p435 and p468) El-Awa also cites : Ibn Farhun, Ibrahim Shams al-Din Muhammad, *Tabsirat al-Hukkam*, Ibid., p225-226 and also Abu Ya'la, Muhammad bin al-Husain al-Farra', *Al-Ahkam al-Sultaniya*, Op.Cit., p267

<sup>114</sup> El-Awa, Mohammad Selim, *Punishment in Islamic Law*, Ibid., p105, also see Mohammad Iqbal Siddiqi, Ibid., p171, also see Tahir-ul-Qadri, Muhammad, *Islamic Penal System and Philosophy*, Ibid., p436; Both El-Awa and Siddiqi also cite : Ibn Farhun, Ibrahim Shams al-Din Muhammad, *Tabsirat al-Hukkam*, Ibid., p227 (El-Awa, Ibid., footnote 56, p105 and p121; Siddiqi, Ibid., footnote 3, p171

<sup>115</sup> See below under the 'punishment of the death penalty' for *hiraba*.

<sup>116</sup> El-Awa, Mohammad Selim, *Punishment in Islamic Law*, Ibid., p105-106, also see Mohammad Iqbal Siddiqi, Ibid., p171-172

<sup>117</sup> Qur'an; *Yusuf*, 12: verses 25, 32, 33, 35, 36, 39, 42 and 100; Tahir-ul-Qadri, Muhammad, *Islamic Penal System and Philosophy*, Ibid., p435 and footnote 224, p436 and p468

<sup>118</sup> El-Awa, Mohammad Selim, *Punishment in Islamic Law*, Ibid., p106; El-Awa also cites : Ibn Farhun, Ibrahim Shams al-Din Muhammad, *Tabsirat al-Hukkam*, op.cit., p225 and also Abu Ya'la, Muhammad bin al-Husain al-Farra', *Al-Ahkam al-Sultaniya*, Op.Cit., p263 (El-Awa, Ibid., footnote 59, p106 and p121)



the illegal acts undertaken by others, and the latter is not possible in present times, as countries do not allow the entrance of convicted criminals from other countries. Although during colonial times, the offenders were removed from the country where they committed their crime to a colony, as this is not possible anymore, the only form of 'banishment' to be undertaken is actual imprisonment.<sup>119</sup>

Together with imprisonment, a higher form of *ta'zir* punishment is that of flogging (*al-jald* – الجلد). Flogging is a common punishment within *Shari'a*. It is preferred as a set punishment for the *hudud* crimes of *qadhif* (unproven accusation of *zina*/fornication) which receives eighty lashes, as stated in the Qur'an in verse 24:4<sup>120</sup> and for proven *zina*, which is also referred to in verse 24:2, which sets out one hundred lashes.<sup>121</sup> However, as a *ta'zir* punishment there is a strong debate over the maximum number of lashings to be implemented on the offenders. The problem that this issue raises is referred to as the possibility of exceeding the *hadd* punishment in cases of *ta'zir* crimes (*hal yutajawaz bil-ta'zir miqdar al-hadd*).<sup>122</sup>

Another view is presented by Imam Maliki, who states that the *ta'zir* punishment of flogging can exceed the *hadd* limits under the conditions that the *qadi* or ruler argues that the given circumstances of a case demands such a higher penalty.<sup>123</sup> A different opinion is held by the Zahiri and Zaydi schools of *fiqh*, together with some Hanafi jurist, which limit the flogging to be no more than ten lashes.<sup>124</sup> Some intermediate,

<sup>119</sup> El-Awa, Mohammad Selim, *ibid.*, p106

<sup>120</sup> "As for those who accuse chaste female believers of adultery or unlawful intercourse, but fail to produce four witnesses to support their allegations, - flog them with eighty strokes of the (leather) whip. Furthermore, do not allow them to give evidence ever again, whatever the matter, for they are transgressors who have over-stepped the bounds of the Divine law - " [24:5] Turner, Colin P., *The Quran : A New Interpretation*, op.cit., p209. The same verse is quoted as 24:4 in Ali, Abdullah Yusuf, *The Holy Qur'an*, *Ibid.*, Vol II, p897

<sup>121</sup> "If any woman or man be found guilty of adultery or unlawful intercourse, you are – provided that you believe in God and the Last Day – instructed to flog them with one hundred strokes of the (leather) whip. Do not let pity and compassion overwhelm you when executing this Divine decree. Furthermore, let a number of believers witness their punishment." [24:3] Turner, Colin, *The Quran : A New Interpretation*, *Ibid.*, p209. The same verse is quoted as 24:2 in Ali, Abdullah Yusuf, *The Holy Qur'an*, *Ibid.*, Vol. II, p896

<sup>122</sup> El-Awa, Mohammad Selim, op. cit, p106

<sup>123</sup> El-Awa, Mohammad Selim, *ibid.*, p106-107, also see Mohammad Iqbal Siddiqi, *Ibid.*, p172; El-Awa also cites : Ibn Farhun, Ibrahim Shams al-Din Muhammad, *Tabsirat al-Hukkam*, op.cit., p204-205 (El-Awa, *Ibid.*, footnote 61, p107 and p121)

<sup>124</sup> El-Awa, Mohammad Selim, *Punishment in Islamic Law*, *Ibid.*, p107, also see Mohammad Iqbal Siddiqi, *Ibid.*, p172 and Tahir-ul-Qadri, *Islamic Penal System and Philosophy*, *Ibid.*, p437; Both El-Awa and Siddiqi cite Muhammad 'Ali b. Ahmad b. Sa'id al-Zahiri Ibn Hazm, *al-Muhalla*, no date given, Maktabat al-Salam al-'Alamiyyah, Cairo, XI, p404; (El-Awa, *Ibid.*, footnote 62, p107 and p121, and Siddiqi, *Ibid.*, footnote 1, p172). El-Awa also cites : Ibn Qayyim, al-Jawziya, Muhammad b. Abi



more compromising rules are held by Hanafi, Shafi'i and some Hanbali jurists. However, there is no unanimity on the maximum number of lashes to be delivered in flogging for a *ta'zir* punishment. The difference of opinions range from not more than twenty, to others who state no more than thirty-nine, and others place the limit on being no more than seventy-five. Still others claim the maximum is to be up to ninety-nine, but not exceed one hundred.<sup>125</sup>

This situation that has led to this indecisive recommendation of the maximum number of lashes is based on two *hadith* reports. One states that the Prophet forbade flogging of any more than ten lashes, except in cases that overtly warranted a *hadd* crime, as these have their own applicable punishments related to it from the Qur'an. The first *hadith* can be found in collection of *ahadith* by both Muslim and al-Bukhari. In al-Bukhari's collection, the *hadith* is narrated by AbdurRahman ibn Jabir :

AbdurRahman narrated on the authority of someone who heard the Prophet (peace\_be\_upon\_him) say, 'No punishment exceeds the flogging of ten stripes except if one is guilty of a crime necessitating a legal punishment prescribed by Allah.'<sup>126</sup>

The second *hadith* is reported by Ahmad bin al-Husain bin Ali Bayhaqi in his work *Al-Sunan al-Kubra*, where it states that the Prophet argued that anybody who exceeds

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Bakr; *Al-Turuq al-Hukmiya fil-Siyasat al-Shari'iya*, Op.Cit, p116 : "where some Hanbali scholars who hold this view are mentioned," (El-Awa, Ibid., footnote 62, p107 and p121); Tahir-ul-Qadri also cites : Shirbini, Muhammad al-Khatib, *Mughni al-Muhtaj*, Op.Cit., Vol.XV, p347 (Tahir-ul-Qadri, Ibid., footnote 225, p437 and p468)

<sup>125</sup> El-Awa, Mohammad Selim, *Punishment in Islamic Law*, Ibid., p107, also see Mohammad Iqbal Siddiqi, Ibid., p172-173 and Tahir-ul-Qadri, *Islamic Penal System and Philosophy*, Ibid., p437-438; El-Awa also cites from 'Uda, 'Abd al-Qadir, *Al-Tashri' al-Jina'i al-Islami Muqaranan bi al-Qur'an al-wad'l*, Op.Cit., Vol.I, p694 and also Muhammad 'Ali b. Ahmad b. Sa'id al-Zahiri Ibn Hazm, *al-Muhalla*, Ibid., XI, p401-402 (El-Awa, Ibid., footnote 63, p107 and p121); Tahir-ul-Qadri also cites from : Sarakhsi, Muhammad ibn Sahl (called Abu Bakr), *Mabsut*, Op.Cit., Vol.XXIV, p35-36 and also Ibn Humam, Kamal al-Din Muhammad, *Fath al-Qadir*, Op.Cit., Vol.IV, no page number given (Tahir-ul-Qadri, Ibid., footnote 227, p437 and p468)

<sup>126</sup> Khan, Muhammad Muhsin, *The Translation of the Meanings of Sahih Al-Bukhari*, Arabic-English, Volume 8, Kazi Publications, Lahore, Pakistan, 1979, no page number provided. Also see Vol 8, *hadith* number 832 from *e:\winhadis\winhadis.tex* and *e:\Islamica\bukhari\bukhari.tex* on CD Rom *Islamica : Digital Library of Islamic Software*, Islamic Computing Centre, London, [ www.ummah.org/icc ]. This *hadith* has also been recorded by Sahih al-Bukhari as being narrated Abu Burda Al-Ansari as : "I heard the Prophet saying, "Do not flog anyone more than ten stripes except if he is involved in a crime necessitating Allah's legal Punishment. ' " in Vol 8, *hadith* number 833 and also narrated by Abu Burda as : "The Prophet used to say, 'Nobody should be flogged more than ten stripes except if he is guilty of a crime, the legal punishment of which is assigned by Allah.' " in Vol 8, *hadith* 831. (*e:\Islamica\bukhari\bukhari.tex* on CD Rom *Islamica : Ibid.*)



the limits given for the punishments established for *hadd* crimes in a non-*hadd* offence would be transgressors (*mu'tadun*).<sup>127</sup>

The main position held against the first *hadith* is that it became abrogated. Ibn Farhun explains that this view of abrogation is defended by the belief that the Companions of the Prophet did not uphold this ruling of ten lashes as being the maximum penalty. It is argued that both Caliphs 'Umar and 'Ali delivered sentences for flogging above the level ten lashes in cases of *ta'zir*, which faced no objection from other Companions. This, therefore, abrogated the tradition.<sup>128</sup> Another interpretation of this *hadith* has been offered by both Ibn Taymiyya and Ibn Qayyim. They interpret it to relate to the relationships between father-son, husband-wife, master-slave and other such relationships where one side has to impose a form of punishment to maintain discipline. In these circumstances, if the chosen punishment of control is beating, then the maximum limit must be ten lashes. However, as these relationships do not correlate with the state authority-citizen relationship, the number of lashes delivered for *ta'zir* offences is under the discretion of the *qadi*.<sup>129</sup> Both Ibn Taymiyya and Ibn Qayyim conclude that this *hadith* was not abrogated, as there is no relevant relationship between the tradition and the state-individual case involved. El-Awa states further that :

However, the jurists who do not accept either the obrogation [*sic*] theory or the interpretation of Ibn Taymiyya and his companion hold the view that a *ta'zir* punishment by flogging should not exceed 10 lashes.<sup>130</sup>

There is some inconsistency and disagreements concerning these *ahadith* that exist between the schools of law. The second tradition, although it is believed to have been

<sup>127</sup> El-Awa, Mohammad Selim, *Ibid.*, p107, also see Mohammad Iqbal Siddiqi, *Ibid.*, p173; Both El-Awa and Siddiqi cite Bayhaqi, Ahmad bin al-Husain bin Ali, *Al-Sunan al-Kubra*, Hyderabad, India, 1354AH, Vol.VIII, p327 (El-Awa, *Ibid.*, footnote 65, p107 and p121, and Siddiqi, *Ibid.*, footnote 1, p173)

<sup>128</sup> Ibn Farhun, Ibrahim Shams al-Din Muhammad, *Tabsirat al-Hukkam*, *Ibid.*, Vol.II, p204. Also see Ibn Humam, Kamal al-Din Muhammad, *Fath al-Qadir*, *Ibid.*, Vol.IV, p215 and also 'Uda, 'Abd al-Qadir, *Al-Tashri' al-Jina'i al-Islami Muqaranan bi al-Qur'an al-wad'l*, Op.Cit., Vol.I, p692

<sup>129</sup> Ibn Taymiyya, Ahmad 'Abd al-Halim b. Majd al-Din, *al-Siyasa' al-Shari'ia*, *Ibid.*, p125 and also Ibn Qayyim, al-Jawziya, Muhammad b. Abi Bakr, *I'lam al-Muwaqq'in*, *Ibid.*, Vol.II, p29-30

<sup>130</sup> El-Awa, Mohammad Selim, *Punishment in Islamic Law*, *Ibid.*, p107, El-Awa cites : Shawkani, Muhammad b. 'Ali, *Nayl al-Awtar*, Cairo, 1357AH, Vol.VII, p150-151 (El-Awa, *Ibid.*, footnote 68, p107 and p122)

incompletely transmitted (*mursal* <sup>131</sup>), has been accepted by all of the Sunni schools of *fiqh*, except by the Maliki school.

However, even those who accept the *hadith* still hold different views on how many lashings are acceptable as the maximum for a *ta'zir* flogging punishment. One interpretation believes that this *hadith* holds that the penalty of flogging will not exceed the lesser amount given for *hadd* crimes. However, there are also various positions that differ on what the minimum amount of lashings for the *hadd* punishment of flogging actually is. Some argue that the minimum is eighty lashes, which is the sentence for the *hadd* crime of *qadhaf*. Others claim that it would be forty lashes, the punishment established for slaves (half of the *hadd* penalty given to the 'freeman'). Another interpretation holds the view that the *hadith* forbids *ta'zir* flogging to be equal with that of *hadd*, when the crime was incomplete in performance. If it was a complete act of crime, it would be categorised for a full *hadd* penalty.<sup>132</sup>

Some jurists maintain that the minimum number of lashes in a flogging sentence for *ta'zir* is considered to be three. However, not all schools of *fiqh* hold this view, as it seems to contradict the theme of *ta'zir*, which is present to enable the judge to decide under their own discretion what punishment will be delivered, depending on the context of each individual case being considered.<sup>133</sup> Some Muslim jurists and scholars

<sup>131</sup> *mursal* : "That is, a Prophetic report or *hadith* resting on a chain of authorities that goes no further back than the second generation after the Prophet. The validity of establishing a legal obligation on the basis of this kind of *hadith* is controversial." El-Awa, Mohammad Selim, *Punishment in Islamic Law*, Ibid., footnote 69, p122; El-Awa cites from : Shafi'i, Muhammad bin Idris, *Kitab al-Risala*, (with the commentary of Shaikh Ahmad Shakir), Cairo, 1940, p465, also Isma'il b. 'Omar Ibn Kathir (also known as 'Imad al-Din ), *Mukhtasar 'Ulum al-Hadith*, (no date given), Cairo, p37-41 and also Ibn Hazm, Muhammad 'Ali b. Ahmad b. Sa'id al-Zahiri, *Al-Ihkam fi 'Usul al-Ahkam*, Cairo, 1347AH, Vol.II, p2-6, (El-Awa, Mohammad Selim, *Punishment in Islamic Law*, Ibid., footnote 69, p122)

<sup>132</sup> An example given here of using *ta'zir* instead of *hadd* would be for petty theft, which is not severe enough to be included as a *hadd* crime. Petty theft would receive the punishment for *ta'zir*, which would be one hundred lashes. This compares with the *hadd* sentence for theft, which can be the amputation of the offender's hand. Also, any sexual relationship which occurs, but did not include sexual intercourse, can be punished by a flogging of more than one hundred lashes, if those involved are *muhsan* (married). If the offender is *ghair-muhsan* (unmarried), then the punishment must be under one hundred lashes, as the one hundred lashes is the penalty for a *hadd* crime. See El-Awa, Mohammad Selim, *Punishment in Islamic Law*, Ibid., p107-108, also see Mohammad Iqbal Siddiqi, Ibid., p174 and p18; Both El-Awa and Siddiqi cite: 'Uda, 'Abd al-Qadir, *Al-Tashri' al-Jina'i al-Islami Muqaranan bi al-Qur'an al-wad'i*, Op.Cit., Vol.I, p692-693 (El-Awa, Ibid., footnote 70, p108 and p122; Siddiqi, Ibid., footnote 1, p174)

<sup>133</sup> El-Awa, Mohammad Selim, *Punishment in Islamic Law*, Ibid., p108, also see Mohammad Iqbal Siddiqi, Ibid., p174-175, also see Tahir-ul-Qadri, Muhammad, *Islamic Penal System and Philosophy*, Ibid., p438; Both El-Awa and Tahir-ul-Qadri cite : Ibn Humam, Kamal al-Din Muhammad, *Fath*



conclude that the view taken by Ibn Taymiyya and Ibn Qayyim is more relevant on both their practical and logical perspectives. Pragmatically they both allow an appropriate punishment that avoids the narrow limitations of a ruler's authority when implementing *ta'zir* sentences. On a logical defence, they limit the meaning of the *hadith*, when relating to the number of acceptable lashes in a flogging for non-*hadd* crimes to a specified area of offence. Therefore, they then move away from the idea of the tradition's abrogation. This position is also compatible with the principle of *shari'a* which promotes the application of legal decisions, rather than disregarding them (*i'mal al-kalam khayrun min ihmalih*).<sup>134</sup> What becomes quite clear in this assessment, is the lack of consistency amongst the different schools of law, in what they argue is the acceptable minimum and maximum number of lashings for the flogging penalty. This is due to their individual interpretations and different legal positions that are derived from the same *hadith*. This is also another illustration of how it can be seen that the Islamic jurists' different *tafsir* (exegesis) will create different interpretations of how *Shari'ah* rulings should be set-out, and how the penalties are implemented in different forms on those who have been convicted of a crime.

The most important form of *ta'zir* punishment that is related to the crime of apostasy, is that of the death penalty (*al-ta'zir bil-qatl* – التعزير بالقتل), which will now be covered.

### 1.3.2 *ta'zir* and the death penalty (*al-ta'zir bil-qatl* – التعزير بالقتل)

As *ta'zir* is the part of *shari'a* that covers the punishments for the less dangerous, or serious, crimes then the death penalty is presented as a sentence for the most heinous crimes. Islamic jurists argue against it being included as a punishment for the less serious crimes that are normally covered by *ta'zir*, and with that point in mind, the death penalty is mainly restricted to be imposed on the convicted of two crimes that actually fall within the *hadd* category: (*hiraba* : armed, ganged robbery; and *zina* :

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*al-Qadir*, op.cit., Vol.IV, p215 (El-Awa, Ibid., footnote 71, p108 and p122 and Tahir-ul-Qadri, *Islamic Penal System and Philosophy*, Ibid., footnote 230, p438 and p468)

<sup>134</sup> El-Awa, Mohammad Selim, *Punishment in Islamic Law*, Ibid., p108, also see Mohammad Iqbal Siddiqi, Ibid., p175; Both El-Awa and Siddiqi cite : Ibn Nujaym, Zayn al-'Abidin Ibrahim, *Al-Ashbah wal-Naza'ir*, Cairo, 1290AH, Vol.I, p168, (El-Awa, Ibid., footnote 72, p108 and p122; Siddiqi, Ibid., footnote 1, p175)

adultery – where the stoning to death (*rajm*) is the sentence for a married offender), and for the act of murder, which falls within *qisas* punishment.<sup>135</sup> The *hadd* crimes and punishments will be discussed in some detail below. Concerning the death penalty:

The jurists, accordingly, are normally against its [*sic*] being inflicted as a *ta'zir* punishment.<sup>136</sup>

Some examples of offences that receive the death penalty as a *ta'zir* punishment can be found in the Hanafi *fiqh* literature, and include the act of habitual homosexuality, *zina* (adultery), certain levels of dacoity/armed gang robbery and an act of murder, where this particular crime did *not* fit into the established punishment of *qisas*, as described above. Other factors that need to be considered before the death penalty can be issued as a *ta'zir* legal sentence, includes the specific circumstances that surround the crime involved (*al-qatl bil-muthqil*). A habitual thief, for an example, who may not be punished under any other existing applicable category, could eventually receive the death penalty, under the judge's discretion, if it was considered to be the only real manner in preventing any future offence from the perpetrator involved.<sup>137</sup> Within the Maliki school, they hold the position that :

The principle that the *ta'zir* punishment should fit the crime, the criminal and the victim is of absolute application. Thus, the death penalty is permissible in certain cases, where either the offence itself is of a very serious nature, such as spying for the enemy, or propagating heretical doctrines, or practices which split

<sup>135</sup> El-Awa, Mohammad Selim, *Punishment in Islamic Law*, Ibid., p108, also see Mohammad Iqbal Siddiqi, Ibid., p175, also see Tahir-ul-Qadri, Muhammad, *Islamic Penal System and Philosophy*, Ibid., p438. All three authors - El-Awa; Siddiqi and Tahir-ul-Qadri also cite: Ibn Farhun, Ibrahim Shams al-Din Muhammad, *Tabsirat al-Hukkam*, Ibid., Vol.II, p205 (El-Awa, Ibid., footnote 73, p108 and p122; Siddiqi, Ibid., footnote 2, p175 and Tahir-ul-Qadri, *Islamic Penal System and Philosophy*, Ibid., footnote 231, p438 and p468)

<sup>136</sup> El-Awa, Mohamed Selim, *Punishment in Islamic Law : A Comparative Study*, Ibid., p108, also see Siddiqi, Muhammad Iqbal, *The Penal Law of Islam*, Ibid., p175. Both El-Awa and Siddiqi cite : Ibn Farhun, Ibrahim Shams al-Din Muhammad, *Tabsirat al-Hukkam*, Op.Cit., Vol.II, p205, (El-Awa, footnote 73, Ibid., p108, p122 and Siddiqi footnote 2, Ibid., p175)

<sup>137</sup> El-Awa, Mohamed Selim, *Punishment in Islamic Law : A Comparative Study*, Ibid., p109, also see Siddiqi, Muhammad Iqbal, *The Penal Law of Islam*, Ibid., p176, also see Tahir-ul-Qadri, Muhammad, *Islamic Penal System and Philosophy*, Ibid., p439. Both El-Awa and Siddiqi cite : Ibn 'Abdin, Muhammad Amin, *Al-Hashiya*, (a commentary on *Al-Durr al-Mukhtar*, by Muhammad b. 'Ali Haskafi – also called 'Ala al-Din), Cairo, 1966, Vol. IV, p27 and p62-64 (El-Awa, footnote 74, Ibid., p109, p122 and Siddiqi footnote 1, Ibid., p176). Both El-Awa and Tahir-ul-Qadri also cite : Ibn Nujaym, Zayn al-'Abidin Ibrahim, *Al-Bahr al-Ra'iq Sharh Kanz al-Daqa'iq*, Cairo, no date given, Vol.V, p45; (El-Awa, footnote 74, Ibid., p109, p122 and Tahir-ul-Qadri, footnote 232, p439, p468)



the community, or the criminal is a habitual offender whose wickedness can only be so stopped.<sup>138</sup>

The Shafi'i and Hanbali schools hold a similar view of imposing the death penalty, as held by the Malikis.<sup>139</sup> It is important to note here, that one of the said crimes that would receive the death penalty is the activity of "propagating heretical doctrines." If there is an established *ta'zir* sentence for people who promote ideas that are categorised as being 'heresy,' this raises the question of why the similar acts of transgressing faith in Islam, i.e. apostasy and blasphemy, would be categorised in *hudud*, a completely different system of punishment. It is also important to note that all of the crimes mentioned here, which warrant the death penalty, seem to relate to acts of treason, sedition and collaboration with the enemy, to bring down the Islamic community. If 'heresy' involves physical attacks against the state, it correlates to treason, whereas passive apostasy does not involve any other person, or physical rebellious acts. It can be argued in this thesis that some forms of 'heresy' can also be categorised as treason, whereas, it is not possible to include apostasy in the same category, due to the different definitions of the acts involved. This perspective of the different acts of apostasy and treason, and what they represent is clarified in more detail, in Chapter Four.

Tahir-ul-Qadri lists five crimes, under both *hudud* and *qisas* categories, that receive the death penalty as a form of punishment. These are : 1; *zina* (committed by a married person), 2; dacoity, 3; sedition, 4; apostasy and 5; *qatl-i-amad*.<sup>140</sup> He argues that Muslim jurists have added an extra ten to this list of appropriate crimes, which receive the death penalty, although as a *ta'zir* punishment.<sup>141</sup> This places the number of crimes liable to be punished with the death penalty within Islamic law as fifteen, and Tahir-ul-Qadri compares this with the Westernised penal system. At the end of

<sup>138</sup> Coulson, N. J., 'The State and the Individual in Islamic Law,' in *International and Comparative Law Quarterly*, January 1957, Vol. VI, p54. Also see El-Awa, Mohamed Selim, *Punishment in Islamic Law*, Ibid., p109, also see Siddiqi, Muhammad Iqbal, Ibid., p176. Both El-Awa and Siddiqi cite Ibn Farhun, Ibrahim Shams al-Din Muhammad, *Tabsirat al-Hukkam*, Cairo, 1301AH, Vol. II, p200; (El-Awa, footnote 75, Ibid., p109, p122 and Siddiqi footnote 2, Ibid., p176).

<sup>139</sup> El-Awa, Mohamed Selim, *Punishment in Islamic Law*, Ibid., p109. El-Awa also cites : Ibn Qayyim, al-Jawziya, Muhammad b. Abi Bakr; *Al-Turuq al-Hukmiya fil-Siyasat al-Shari'ia*, Op.Cit, p286; (El-Awa, footnote 76, Ibid., p109, p122)

<sup>140</sup> Tahir-ul-Qadri, Muhammad, *Islamic Penal System and Philosophy*, Ibid., p439. The debate concerning number of crimes of *hudud*, and whether apostasy should be included in this list, will be discussed below, in further detail.

<sup>141</sup> Tahir-ul-Qadri, Muhammad, *Islamic Penal System and Philosophy*, Ibid., p439. Also see 'Uda, 'Abd al-Qadir, *Al-Tashri' al-Jina'i al-Islami Muqaranan bi al-Qur'an al-wad'l*, op.cit., Vol.I, p689

the eighteenth century there were approximately two hundred crimes in the English criminal system that were eligible for the death penalty and also one hundred and fifty crimes in the French penal system, that were punishable by the same penalty.<sup>142</sup> At the end of the eighteenth century and through the nineteenth century a movement drove towards reducing the amount of death penalty legislation in such a high number of crimes.<sup>143</sup>

As a *ta'zir* penalty, it is essential to be aware that there are several *ahadith* reports that allow the death penalty under discretionary conditions, such as cases involving spying for the enemy, where the Prophet ordered the perpetrator to be executed for this crime.<sup>144</sup> It is also important to be aware that the death penalty, as a *ta'zir* punishment is an exception, as it is applied to the minimum number of cases and only to necessary situations, based on the criminal's character and/or the very nature of the crime committed.<sup>145</sup>

An important issue raised here, is that the use of capital punishment should be strictly controlled by the legislators and jurists in each country, to monitor the eligible offences associated with the penalty. Such a penalty of this nature, it is argued, should not be left entirely to a judge's discretion, but applied only by established legislation that has been agreed upon by the governing body.<sup>146</sup>

*Shari'a* in a general sense, has one punishment attached to one crime. This principle is taken from the Qur'an, where the attached rules and crimes are mentioned in various verses.<sup>147</sup> However, there are some exceptions to this principle, that have been made

<sup>142</sup> Tahir-ul-Qadri, Muhammad, Ibid., p439. Also see 'Uda, 'Abd al-Qadir, *Al-Tashri' al-Jina'i al-Islami Muqaranan bi al-Qur'an al-wad'l*, Ibid.

<sup>143</sup> Tahir-ul-Qadri, Muhammad, Ibid., p439.

<sup>144</sup> El-Awa, Mohamed Selim, *Punishment in Islamic Law*, ibid., p109. Also see Ibn Qayyim, al-Jawziya, Muhammad b. Abi Bakr; *Zad al-Ma'ad*, op.cit., Vol.II, p68

<sup>145</sup> El-Awa, Mohamed Selim, ibid., p109, also see Siddiqi, Muhammad Iqbal, op.cit., p176, also see Tahir-ul-Qadri, Muhammad, op.cit., p440.

<sup>146</sup> El-Awa, Mohamed Selim, Ibid., p109. Also see: 'Uda, 'Abd al-Qadir, *Al-Tashri' al-Jina'i al-Islami Muqaranan bi al-Qur'an al-wad'l*, op.cit., Vol.I, p688,

<sup>147</sup> El-Awa, Mohamed Selim, Ibid., p109. El-Awa also cites the relevant Qur'anic verses to include 5:95, 6:160, 10:27, 40:40 and 42:40, (El-Awa, footnote 80, Ibid., p109, p122). These verses read as : "O you who believe! When in *ihram* garb do not kill game, even if the animal in question has been caught outside the Sacred Precinct by a person or persons not wearing *ihram* robes. If a believer does so intentionally, as compensation he must sacrifice a domestic animal and bring it to the *ka'ba*; the animal must be equivalent in weight, value or nature to the one he has killed, as determined by two just believers among you. Alternatively, he must make amends for his sins by giving food to the poor, to



acceptable by the jurists, regarding some specific crimes and circumstances. The Hanafi school of *fiqh*, has allowed a *ta'zir* punishment to be added onto a given *hadd* punishment in set circumstances that justify this. This principle is the basis for the one year banishment imposed on a fornicator, as mentioned above. Ibn Taymiyya argued that the Hanafi school allows for the established *hadd* punishments to be exceeded if the authority involved (i.e. the *imam*) interprets it as necessary in individual case circumstances.<sup>148</sup> The Hanafi school delivers the death penalty in cases where a convicted criminal repeatedly undertakes various crime, even if none of the crimes do not normally receive the death penalty as the standard punishment. This procedure is entitled *al-qatl siyasatan*, i.e. the death penalty is justified on the basis of the public interest. As El-Awa states : “The punishment which may be added to the *hadd* can be nothing but a *ta'zir* punishment.”<sup>149</sup>

An interesting point is the position held by the Maliki school. They believe that *ta'zir* punishment may be delivered where certain crimes involve injury or wounds to the

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the value of the animal killed. Or he must fast as many days as the number of poor whom he would have fed had he opted for the second of the three alternatives, so that he may taste the bitter fruits of his sin. This ruling does not apply to offences committed in the past : God forgives what is past. But if anyone who has committed this offence in the past should repeat the offence in the future, knowing that his Lord has forbidden it, God will punish him for those offences committed before the ruling was issued. For He is God Almighty, and the right to retribution is His.” [Al-Ma'idah, 5:96] Turner, Colin, *The Quran : A New Interpretation*, op. cit, p69;

“Whoever does a single good deed shall be rewarded tenfold; whoever does a single evil deed shall be recompensed only in accordance with the extent of that evil. And no soul shall be dealt with unjustly.” [Al-An'am, 6:161] Turner, Colin, *The Quran : A New Interpretation*, Ibid, p85;

“As for those who have done wrong – each act of evil will be rewarded with evil, and the dust of shame and ignominy will settle on their faces. No-one will be able to protect them from the punishments meted out by God. So blackened will their faces be by the sins they have committed that one would think they had drawn parts of the turgid blackness of night over themselves like a veil. They are the Companions of Hell, there to reside forever.” [Yunus - 10:28] Turner, Colin, *The Quran : A New Interpretation*, Ibid, p121; “Those who commit evil will receive evil as a reward; those who do good – be they men or women – and who believe – they shall be rewarded with the Gardens of Paradise, where they shall receive sustenance without measure.” [Al-Mu'min – also known as Ghafir - 40:41] Turner, Colin, *The Quran : A New Interpretation*, Ibid, p283; “Whoever is bent on revenge (for some injury or injustice) ought to bear in mind that the recompense for an injury is an injury that that is similar in nature and degree – in other words, an eye for an eye. But if a person does not wish to seek recompense, preferring instead to make peace with the aggressor, then he has a right to a generous reward from God. Know that God does not love him who does wrong – be he the oppressor or the victim who has taken unlawful revenge.” [Ash-Shura - 42:41] Turner, Colin, *The Quran : A New Interpretation*, Ibid, p292

<sup>148</sup> El-Awa, Mohamed Selim, Ibid., p110. Also see Ibn Taymiyya, Taqi al-Din, 1398/1978, *al-Sarim al-Maslul 'ala Shatim al-Rasul*, edited by Mohammad Muhyi'l-Din 'Abd al-Hamid, Beirut, Dar al-kitab, p12. El-Awa also states that some Hanafi authorities agree with Ibn Taymiyya's view, as it is defended by the Hanafi legal position. Muhammad Amin Ibn 'Abdin also confirms that Ibn Taymiyya's view is the same as that held by the Hanafi school, in his work *Al-Hashiya*, op.cit, Vol.IV, p62-63 and p214-215. (El-Awa, footnote 81, Ibid., p110, p122)

<sup>149</sup> El-Awa, Mohamed Selim, Ibid., p110,



victim(s), which would even apply in cases when they fell within the category of *qisas* punishment. This position is held as a strong deterrent for existing criminals and potential criminals.<sup>150</sup>

Therefore, from these examples given and the positions held by the different schools of *fiqh*, it is made clear that *ta'zir* can be an original punishment for crimes that have no set form of penalties or it can be an additional form of punishment for crimes that already have established related punishments within the categories of *hudud* and *qisas* applications. A relevant point to make here, is that the principles of *ta'zir* allow a judge to deliver fairly severe sentences upon a habitual obsessive offender. Such examples, as provided above, are often used when relating to this characteristic condition of the criminal, with the relevant crimes and punishments involved.<sup>151</sup> It would now be relevant to assess the breadth of authority in the judge's hands, concerning their power of discretion in the penalty decisions they can make.

### **1.3.3 A Judge's power of discretion.**

It is understood that the judge has the free will to determine the sentence to be offered, under the category of *ta'zir* punishments in certain crimes. El-Awa describes the judge's position, arguing that :

The extensive scope of the ruler's or judge's discretion outside the field of *hadd* and *qisas* offences is indeed intolerable to modern legal thinking and is contrary to the accepted constitutional principles of today. It was described by a contemporary *Shari'a* scholar as 'extensive powers at the ruler's disposal, to discipline anyone, for anything, with any punishment (*yu addibu man sha' 'ala ma sha' bi ma sha'*).'<sup>152</sup>

El-Awa claims that this wide use of power is diametrically opposite to the universally accepted constitutionally established principle of '*nulla poena sine lege*,' and goes on to state that discretion is actually far more restricted than it appears to be. A judge must aim to reach a reasonable, balanced decision based on conscientious arguments

<sup>150</sup> El-Awa, Mohamed Selim, Ibid., p110. Also see Ibn Farhun, Ibrahim Shams al-Din Muhammad, *Tabsirat al-Hukkam*, op.cit., Vol.II, p159

<sup>151</sup> El-Awa, Mohamed Selim, Ibid., p110. Also see 'Amer, 'Abd al-'Aziz, *Al-Ta'zir fil-Shari'a al-Islamiya*, Op.Cit., p243-248

<sup>152</sup> El-Awa, Mohamed Selim, Ibid., p110-111. Also see Shaltut, Shaikh Mahmud, *Al-Islam 'Aqida wa Shari'a*, Cairo, 1964, p314



(*ijtihad*) to reach the fair, justifiable *ta'zir* sentence in relevant cases.<sup>153</sup> Thus, the judge:

must not pronounce penalties at his mere whim or pleasure, or turn from one to another in arbitrary fashion, for this would be injustice (*fusuq*) and contrary to consensus (*ijma'*).<sup>154</sup>

The discretionary decision has to be based on the judge's attempt to punish the convicted, with a suitable reciprocation for the crime committed. The whole process of discretionary authority is for the judge to primarily safeguard the public interest by aiming to prevent further crimes undertaken within the community.

God's Will is manifestly expressed both in the Qur'an and within what are agreed upon to be authentic traditional reports of the Prophet's life, the Sunna or *al-ahadith al-sahihah*. The Qur'an and Sunna declare what acts are prohibited and labels them as *ma'asi* (sins). In reference to these forbidden acts, with their classified status as sins, the judge's role is to select the appropriate punishment for the sin undertaken, but the judge :

has nothing to do with the determination of the offence, as it has already been determined by the Qur'an or the Sunna. Examples of such cases are innumerable, but it will help to give some of the most important ones.<sup>155</sup>

The most important crimes dealt with in *ta'zir* punishments, are all cited within the Qur'an. They include: Usury (*al-riba* - الربا ), false testimony in court (*shahadat al-zur* - شهادة الزور), the breach of trust (*khiyanat al-amanah* - خيانة الأمانات), any form of bribery (*al-rishwa* - الرشوة) and, more importantly, the expression of insults (*al-sabb* - السب ).

Referring to the Qur'anic injunctions provided on aiming to prevent these crimes, the verses included shall be very briefly described here : Usury, (*al-riba* - الربا ), is

<sup>153</sup> Qarafi, Shihab al-Din al-'Abbas b.Ahmad, *Kitab al-Furuq al-Saniya*, op. cit, Vol.III, p16-20

<sup>154</sup> Qarafi, Shihab al-Din al-'Abbas b.Ahmad, *Kitab al-Furuq al-Saniya*, Ibid, Vol.IV, p182, translated by Coulson, N. J., in the article 'The State and the Individual in Islamic Law,' in *International and Comparative Law Quarterly*, op.cit.; no page number given

<sup>155</sup> Siddiqi, Muhammad Iqbal, *The Penal Law of Islam*, op.cit., p177, also see El-Awa, Mohamed Selim, op.cit., p111-112,

covered in five verses within the Surahs *al-Baqarah*, 2, *al-Imran*, 33 and *al-Hashr*, 59.<sup>156</sup> One verse in reference to prohibiting usury reads as as :

وَأَحَلَّ اللَّهُ الْبَيْعَ وَحَرَّمَ الرِّبَا

But Allah hath permitted trade and forbidden usury (2:275)<sup>157</sup>

Another crime is the false testimony in court (*shahadat al-zur* – شهدات الزور), covered by 4:135<sup>158</sup> and 22: 30.<sup>159</sup> Another verse, 25: 72, describes believers as :-

وَالَّذِينَ لَا يَشْهَدُونَ الزُّورَ “Those who witness no falsehood” (25:72)<sup>160</sup> The act of

any breach of trust (*khiyanat al-amanah* - خيانة الامانات), is covered in 4: 48.<sup>161</sup>

Another verse that is often quoted from the Qur'an concerning this offence, is 8: 27.<sup>162</sup> It was these verses, amongst others, that jurists use to base their treatment for this offence. Siddiqi quotes from a *hadith* by Muslim, which states that the Prophet himself equalised the breach of trust - *khiyanat al-amanah* with theft.<sup>163</sup> There are many other verses that cover the area of breaching trust, but El-Awa suggests that

<sup>156</sup> “The Qur'an prohibits dealing in usury in five verses contained in the Surahs II, III, and LIX,” El-Awa, Mohamed Selim, Ibid., p112. One example is given as “O ye who believe! Fear Allah and give up what remains of your demand for usury, if ye are indeed believers. If ye do it not, take notice of war from Allah and His Apostle.” Qur'an *al-Baqarah*, 2:278-279; Siddiqi, Muhammad Iqbal, Ibid., p178, also see El-Awa, Mohammad Selim, Ibid., p112, also see Tahir-ul-Qadri, Muhammad, *Islamic Penal System and Philosophy*, op.cit., p445

<sup>157</sup> Siddiqi, Muhammad Iqbal, Ibid., p177-178, also see El-Awa, Mohammad Selim, Ibid., p112,

<sup>158</sup> “O ye who believe! Stand out firmly for justice, as witnesses to Allah, even though it be against yourselves, or your parents or your kinsmen.” (4:135), Siddiqi, Muhammad Iqbal, *The Penal Law of Islam*, Ibid., p179, also see Tahir-ul-Qadri, Muhammad, *Islamic Penal System and Philosophy*, op.cit., p446 also see El-Awa, Mohammad Selim, Ibid., p112 and footnote 91 on p122,

<sup>159</sup> Tahir-ul-Qadri, Muhammad, *Islamic Penal System and Philosophy*, op.cit., p446-447 also see El-Awa, Mohammad Selim, Ibid., p and 112 footnote 91 on p122. Also see Siddiqi, Muhammad Iqbal, Ibid., p179

<sup>160</sup> Siddiqi, Muhammad Iqbal, Ibid., p179 also see El-Awa, Mohammad Selim, Ibid., p112 and footnote 91 on p122,

<sup>161</sup> “Allah doth command you to render back your Trusts to those to whom they are due.” (4:58), Siddiqi, Muhammad Iqbal, Ibid., p180 also see El-Awa, Mohammad Selim, Ibid., p113 and footnote 92 on p122, also see Tahir-ul-Qadri, Muhammad, *Islamic Penal System and Philosophy*, op.cit., p445 and footnote 240 on p469. However, it is important to note that Tahir-ul-Qadri quotes the verse as Surah 5:48. This must be an unfortunate typing error, as the other two sources cite it as Surah 4:48 and this verse is the same text quoted by all three of the authors. On checking verse 4:48 in the Qur'an, it agrees with the same given text.

<sup>162</sup> “O ye that believe! betray not the trust of Allah and the Apostle, nor misappropriate knowingly things entrusted to you.” (8:27), Siddiqi, Muhammad Iqbal, Ibid., p180 also see El-Awa, Mohammad Selim, Ibid., p113 and footnote 92 on p122

<sup>163</sup> Siddiqi, Muhammad Iqbal, Ibid., p180. Also see: Muslim, *Sahih*, Vol. V, p115



these are sufficient enough to testify that the offence was formulated in the Qur'an.<sup>164</sup>

He also argues that

To prove the criminal nature of breach of trusts, some writers have referred to XXXIII:72, but this verse is irrelevant to this subject. There, the word '*amanah*' means 'responsibility to God,' while in the verses quoted it means 'financial trust.'<sup>165</sup>

A further crime with a *taz'ir* punishment is that of any form of bribery (*al-rishwa* - الرشوة). Just as in the same way that the Qur'an forbids all other acts of dishonesty as the means of making money, either through usury, the breaching of trust or in any other related manner, then also, the more blatant act of bribery again raises the forbidden nature of its use stated within the Qur'anic. One verse, 2:188, clearly indicates individuals how to act morally and ethically.<sup>166</sup> Again, this offensive act has no fixed punishment and has been, therefore, classified as a *ta'zir* crime where the judge or ruler can impose the decided penalty. Of more relevance to this present research, is the act of expressing any insults from one to another (*al-sabb* - السب).

#### 1.3.4 *ta'zir* and the issue of insults : (*al-sabb* - السب).

The Qur'an forbids any insult towards any other person, and it offers immense tolerance in this command, as it includes those people of other faiths, thus unbelievers. This is clearly stated in Surah *Al-An'am*, 6:108 :

<sup>164</sup> El-Awa, Mohammad Selim, op.cit., p113

<sup>165</sup> Ibid., footnote 92 on p122. Also see: 'Uda, 'Abd al-Qadir, *Al-Tashri' al-Jina'i al-Islami Muqaranan bi al-Qur'an al-wad'l*, op.cit., p139. Surah *Al-Ahzab*, 33, verse 72 reads as : "We offered the Trust to the heavens, the earth and the mountains – namely that they attain independent existence and acquire total responsibility for their own actions – but they declined, afraid that they would be unable to meet the challenge. But man accepted the Trust, for he was ignorant and unjust." [cited as 33:73] in Turner, Colin, *The Quran : A New Interpretation*, op. cit, p255. Mohammad Asad argues that "The classical commentators give all kinds of laborious explanations to the term *amanah* ('trust') occurring in this parable, but most convincing of them (mentioned in Lane, 1, 102, [The Arabic-English Lexicon, E.W.Lane] with reference to the above verse) are "reason" or "intellect" and "the faculty of volition" – i.e., the ability to choose between one or more possible courses of action or modes of behaviour and thus, between good and evil." Asad, Mohammad, *The Message of the Qur'an*, op.cit., in footnote 87 on p653. Also Mohammad Ali suggests quotes from *Taj-ul-'Arus* that "not bearing the trust signifies that they paid it back and everyone who is unfaithful to a trust is said to have borne it." Ali, Maulvi Mohammad, *The Holy Qur'an*, Ibid., in footnote 2016 on p834. Also see footnotes 3777, 3778, 3779, 3780, 3781, and 3782 in Ali, Abdullah Yusuf, *The Holy Qur'an*, op.cit., Vol. III, p1129 -p1130.

<sup>166</sup> "Consume not your property between you in vanity, neither proffer it to the judge that you may sinfully consume a portion of other man's [sic] property intentionally." (2:188), Siddiqi, Muhammad Iqbal, op.cit., p182; also see Tahir-ul-Qadri, Muhammad, *Islamic Penal System and Philosophy*, op.cit., p448 also see El-Awa, Mohammad Selim, *Punishment in Islamic Law*, Ibid., p113

وَلَا تَسُبُّوا الَّذِينَ يَدْعُونَ مِنْ دُونِ اللَّهِ فَيَسُبُّوا اللَّهَ عَدْوًا  
بِغَيْرِ عِلْمٍ كَذَلِكَ زَيَّنَّا لِكُلِّ أُمَّةٍ عَمَلَهُمْ ثُمَّ إِلَىٰ رَبِّهِمْ مَرْجِعُهُمْ  
فَيُنَبِّئُهُمْ بِمَا كَانُوا يَعْمَلُونَ ﴿٣٨﴾

Revile not ye those whom they call upon besides Allah, lest they out of spite revile Allah in their ignorance. Thus have We made alluring to each people its own doings. In the end will they return to their Lord, and We shall then tell them the truth of all that they did.<sup>167</sup>

It is of particular interest to note that in his explanation of how the Qur'an presents the prohibition of one person to insult (*al-sabb* – السب) another, Siddiqi cites part of

verse by presenting this line from the verse: وَلَا تَسُبُّوا الَّذِينَ يَدْعُونَ مِنْ دُونِ اللَّهِ

However, he translates the line into English as this : “Abuse not those who pray apart from Allah,”<sup>168</sup> while Abdullah Yusuf Ali translates this same line to mean: “Revile not ye those whom they call upon besides God.” Tahir-ul-Qadri also translates the same sentence of this verses as :

وَلَا تَسُبُّوا الَّذِينَ يَدْعُونَ مِنْ دُونِ اللَّهِ فَيَسُبُّوا اللَّهَ عَدْوًا بِغَيْرِ عِلْمٍ

You should not revile those whom they worship beside Allah, lest they, out of spite, should revile Allah in their ignorance.<sup>169</sup>

The last two translations indicate more towards identifying the act of *al-shirk* more than Siddiqi's use of English words. The point to be made here is that, although the difference in each translation here is only slight, and both do carry the same main theme, it does become apparent that when reading only one of the translations, which has a more loose translation than the Arabic source of the Qur'an, this has the potential that can lead to confusion in passing on the incorrect meaning of the verse to an non-Arabic speaker. Therefore, any translation and interpretation of verses can get even more problematic, especially when covering very sensitive, or even controversial

<sup>167</sup> Ali, Abdullah Yusuf, *The Holy Qur'an*, op.cit., Vol. I, p321-322

<sup>168</sup> Siddiqi, Muhammad Iqbal, *Ibid.*, p181

<sup>169</sup> Tahir-ul-Qadri, Muhammad, *Islamic Penal System and Philosophy*, op.cit., p447



issues such as the concept this research covers. The *Shari'ah* penalty for apostasy and the meaning of the relevant Qura'nic verse that relate to this sin.

Amongst the Muslim community, the command from the Qur'an in *Al-Hujurat*, 49:11, indicates how Muslims should endeavour to treat each other :

يَتَأْتِيهَا الَّذِينَ ءَامَنُوا لَا يَسْخَرُونَ قَوْمًا مِّن قَوْمٍ عَسَىٰ أَن يَكُونُوا خَيْرًا مِّنْهُمْ  
وَلَا نِسَاءً مِّن نِّسَاءٍ عَسَىٰ أَن يَكُنَّ خَيْرًا مِّنْهُنَّ وَلَا تَلْمِزُوا أَنْفُسَكُمْ وَلَا  
تَنَابَزُوا بِالْأَلْقَابِ بِئْسَ الْأَسْمُ الْفُسُوقُ بَعْدَ الْإِيمَانِ وَمَن لَّمْ يَتُبْ فَأُولَٰئِكَ  
هُمُ الظَّالِمُونَ ﴿١١﴾

O believers, let not any people scoff at another people who may be better than they; neither let women scoff at women who may be better than themselves. And find not fault with one another, neither revile one another by nick-names. An evil name is ungodliness after belief.<sup>170</sup>

Siddiqi and El-Awa state that, accordingly, the act of any insult is classified as a *ta'zir* offence.<sup>171</sup>

As an interesting addition to these crimes, related to the different levels of offence that can occur against Islam, the Prophet Muhammad and Allah, Tahir-ul-Qadri mentions that "the Qur'an has also declared gambling (القمار والميسر) at par [sic] with drinking and acts of blasphemy (*shirk*)"<sup>172</sup> in 5:90, which reads as :

إِنَّمَا الْخَمْرُ وَالْمَيْسِرُ وَالْأَنْصَابُ وَالْأَزْلَامُ رِجْسٌ مِّنْ عَمَلِ الشَّيْطَانِ فَاجْتَنِبُوهُ

Liquor, gambling, idols and divining arrows are but abominations and satanic devices. (5:90)<sup>173</sup>

The author of this thesis argues that the underlying message of the Qur'an in this verse clearly presents the understanding that Islam promotes devout Muslims to undertake a definite and clean lifestyle. This verse deliberately aims Muslims to avoid the use and, indeed, the misuse of alcohol because when a person is overcome with

<sup>170</sup> Siddiqi, Muhammad Iqbal, op.cit., p181; also see Tahir-ul-Qadri, Muhammad, *Islamic Penal System and Philosophy*, op.cit., p447 and also see El-Awa, Mohammad Selim, op.cit., p113

<sup>171</sup> Siddiqi, Muhammad Iqbal, *The Penal Law of Islam*, Ibid., p181 also see El-Awa, Mohammad Selim, *Punishment in Islamic Law*, Ibid., p113

<sup>172</sup> Tahir-ul-Qadri, Muhammad, *Islamic Penal System and Philosophy*, op.cit., p449

<sup>173</sup> Ibid., p449



excessive use of alcohol, they could easily be lead into the hedonistic self-indulgent debauchery and become a wicked person. Hence, a reference is made in the final words of this verse to indicate that such acts as drinking alcohol, making a wager with one's earnings, and believing in polytheism are nothing more than "abominations and satanic devices."

Siddiqi argues that there is no entitlement for an appeal (*mura'fa'a* – مرافعة) against any sentence delivered by a judge. The penalty given is to be undertaken immediately and without any resistance. The judge has been commanded by the Qur'an to have the authority of the *hakam* - حكم (arbitrator) as a devout Muslim, to decide upon cases with strict adherence to the Qur'an and Sunnah. It is due to this factor, that there is no opportunity for a criminal who is convicted of a crime, to have the right to appeal on the decision made. The only capacity for this would be that after a sentence is delivered by the judge, the convicted individual could question the judge's sentence due to their innocence and argue that sufficient evidence had not been produced during the trial to prove the innocence. If the authorities discover that the judge had wrongfully punished the person, the punishment will be reciprocated on the judge for a breach in their role. As an example of who the reciprocation is implemented on the judge then:

if the appellant had been flogged 80 stripes, the *Qadi* will receive the same number of stripes and *ipso facto* will be deposed. If the appellant is found a liar, he will undergo a further sentence of a *ta'zir* for lying.<sup>174</sup>

Finally, it is obviously abhorrent for any contempt of court to occur. As the judge is held with respect and integrity, then any comments or acts against the judicial process is a blatantly apparent offence. Anyone guilty of contempt of court will be requested to produce adequate evidence to support their claims, or receive the punishment for defamation against the judge.<sup>175</sup>

In conclusion here, the five most important crimes described above, those of usury : *al-riba* – (الربا), false testimony : *shahadat al-zur* – (شهادت الزور), breach of trust :

<sup>174</sup> Siddiqi, Muhammad Iqbal, *The Penal Law of Islam*, Ibid., p183

<sup>175</sup> Ibid., p183



*khiyanat al-amanah* – ( خيانة الامانات ) insults : *al-sabb* – ( السب ), and bribery: *al-rishwa* – ( الرشوة ) are sufficient to clarify that *ta'zir* offences are firmly established within the Qur'an. However, this being said, the judge or ruler still has some limited ability to impose a decided penalty beyond the limits stated by the Qur'an and Sunnah. It is important to emphasise that the judge is very restricted in this right to do so. The reason for their allowance to have such discretion to determine both crimes and the appropriate punishments, is for the overall benefit for the whole community. Their role is to promote the safety of all those living within the community, by aiming to deter such crimes being either re-committed by the same perpetrators or stop the crimes being copied and committed by 'new' criminals.

In reference to the crime of *al-sabb* – ( السب ), it becomes obvious that the Qur'an openly presents a message of utter tolerance, the acceptance of the religious beliefs of *ahl al kitab*, the other believers who are accepted to be included as *al-dhimma*, living in the Islamic community. The Qur'an promotes God's full Knowledge and Awareness that those who will choose to follow the Right Path will do so, and those who prefer to reject it will do so, but will have to answer for their own sins on Judgement Day - when they will be asked 'why did you reject *'iman* (faith)'?, 'why did you reject *tawhid*' (the Oneness of God)? and 'why did you reject God'? The hypothesis of this thesis intends to emphasise that the argument which supports the belief that the punishment for a crime of 'unbelief' is to be delivered in this world cannot be defended. It seems to be clear that any form of 'unbelief' is to be punished in the Hereafter, following the natural death of the 'offender.'

To pursue this argument, the crimes of *al-hudud*, which are those acts, and their specific punishments, both of which have been clearly stated in detail within the Qur'an, will now be assessed. This is in order to establish whether the act of 'insults' (*al-sabb* – السب ) and blasphemy, or apostasy, can be both included in the category of *hudud* punishments. This is of particular importance because *al-sabb* has already been accepted as being categorised as a crime that is punishable by *ta'zir*, following the judge's discretion after a full assessment of the individual case involved.

#### 1.4. *Hudud* : الحدود : Inconsistencies and Ambiguities

Within the classical manuals of *Shari'a*, several main criminal offences are listed as having been given specific penalties that have been either related to or are clearly stated within the Qur'an and the Sunna. The stated punishments are termed *al-hudud* – الحدود (singular ; *hadd* – حد).<sup>176</sup>

Aly Aly Mansour suggests the very meaning behind the *hudud* punishments, which is the protection of the whole society, by attempting to cause prevention of any further undertaking of these crimes, as the crimes involved in this category have the most serious effect on the community :

*Hudud* penalties are not meant to frighten Muslims but to prevent the growth of a climate favourable to the existence and spread of such crimes. Thus, the incidence of such crimes becomes the exception. The penalties of *Hudud* are only intended to deter those who have a tendency to commit crime, or those who are easily tempted. In the majority of cases, such people will not be restrained except by very severe penalties.<sup>177</sup>

*Hudud* can be defined as “statutory penalties,”<sup>178</sup> as they are penalties laid down by the Qur'an and/or the Sunnah, therefore no pardon or amicable settlement of the offence. As Safia Safwat defines it, “Semantically, *hudud* (sing. *hadd*) means restricted or restriction, prevention, hindrance or prohibition, and hence a restrictive ordinance or statute of God.”<sup>179</sup> Also within the Qur'an, the term exists in 2:187 as:

تِلْكَ حُدُودُ اللَّهِ فَلَا تَقْرُبُوهَا – “There are limitations imposed by God. Don't touch

them.”<sup>180</sup> The Qur'an also declares in 2:229 that :

<sup>176</sup> El-Awa, Mohammad Selim, *Punishment in Islamic*, op.cit., p1

<sup>177</sup> Also see Mansour, Aly Aly, ‘*Hudud Crimes*,’ in M. Cherif Bassiouni, (ed.) *The Islamic Criminal Justice System*, op.cit., p195. see O’Sullivan, Declan, ‘*Al-Hudud* : الحدود : Definition of Crimes and Punishments stated within the Qur'an and Sunna - Focusing on ‘Apostasy’ [Ridda wa irtidad : ارتداد و ردة] as a *Hadd* : حد, in *Le Courrier Du Geri – Recherches D'Islamologie et de Theologie Musulmane*, in ‘Vol. 3, No. 1-2, Printemps-Automne 2000’ January 2000, GERI (Groupe d’Etudes et de Recherches Islamologiques) in l’Université Marc Bloch de Strasbourg, France, p42.

<sup>178</sup> Safwat, Safia F., ‘Offences and Penalties in Islamic Law,’ op.cit., p153 and in footnote 22 on p179

<sup>179</sup> Ibid., p153-154

<sup>180</sup> Tahir-ul-Qadri, op.cit., p262, Qur'an 2:187. Also see O’Sullivan, Declan, ‘*Al-Hudud* : الحدود : Definition of Crimes and Punishments stated within the Qur'an and Sunna - Focusing on ‘Apostasy’, op.cit., p42



تِلْكَ حُدُودُ اللَّهِ فَلَا تَعْتَدُوهَا وَمَنْ يَتَعَدَّ حُدُودَ اللَّهِ فَأُولَئِكَ هُمُ الظَّالِمُونَ

These are the limitations imposed by Allah. Don't cross them. And those who defy the limitations of God are indeed the transgressors.<sup>181</sup>

Tahir-ul-Qadri argues that therefore, the unlawful acts that are declared prohibitive by divine law, are defined as *hudud* and violation of them is a “crime.” Further he continues, concluding that on such basis of literal and etymological levels, the laws of *shari'a* which relate to *awamir* and *nawahi* (acts of commission and omission) are known as both *hudud* and *hudud-Allah*. In a technical sense, Tahir-ul-Qadri defines *hadd* from the widely cited work *al-hedaya* (The Guide) as “The fixed punishment implementable as a right of God is known as *hadd*.”<sup>182</sup> An inclusive and comprehensive definition can be found in *fiqh-us-Sunnah*, by various jurists as “*hadd* means the punishment, fixed and enjoined as the right of Allah by the Qur'an, Sunnah or *ijma-i-Qat'i*.”<sup>183</sup>

Tahir-ul-Qadri defines the different uses of the word *hadd* and its derivatives. He states that *hadd* means :

الحاجز بين الشيئين الذي يمنع الخلط الحدهما بالآخر

“the differentiating factor between the two, which prohibits interfusion of one with another.”<sup>184</sup> He also defines its usage to mean ‘prevention,’ as is the word *al-hadad* (الحد), of the same root, to mean ‘prevented and prohibited’ (derived from ممنوع).

Within *shari'a*, prohibition is expressed as *hudud* or *hudud Allah* – حدود الله.<sup>185</sup>

<sup>181</sup> Ibid., p262, Qur'an 2: 229

<sup>182</sup> Ibid., p263, Tahir-ul-Qadri also cites Marghinani, *Al-Hedaya*, (no date given), Vol. II, p481

<sup>183</sup> Tahir-ul-Qadri, *ibid.*, p263, Tahir-ul-Qadri also cites As-Sayyid Sabiq, *fiqh-us-Sunnah*, (no date given), Vol. II, p355

<sup>184</sup> Tahir-ul-Qadri, Muhammad, *Islamic Penal System and Philosophy*, Minhaj-ul-Qur'an Publications, Lahore, 1995, p262 also see Tahir-ul-Qadri, Muhammad, *Classification of Islamic Punishments*, Minhaj-ul-Qur'an Publications, Lahore, 1988, p8

<sup>185</sup> Tahir-ul-Qadri, Muhammad, *Islamic Penal System and Philosophy*, *Ibid.*, p262 On a similar level of protection and prohibition, Tahir-ul-Qadri also gives the definition of *Al haddad* (الحداد) which he states to mean the ‘gate keeper’ or ‘door-man,’ thus preventing entrance to the house.

Mohammad Selim El-Awa explains the correct legal context of the words use. The Arabic word *hudud* (singular; *hadd*) has many different meanings. The limit, as in boundary, of something, for example an area or a piece of land, is its *hadd*. Also, the man who carries out the designated punishment is entitled *haddad*, ( ) which is derived from the same root.<sup>186</sup>

For the essential definition of *hadd*, Tahir-ul-Qadri quotes from Edward William Lane's *An Arabic-English Lexicon*, concluding that

We can correctly appreciate that the word *hadd* means prevention, hindrance, an impediment, a withholding, restraint, a debarring, inhibition, forbiddance, prohibition, interdiction, repelling, an averting, a bar, an obstruction, a partition, a separation between two things or two places or two persons, to prevent their commixture, or confusion, or the encroachment of one upon the other.<sup>187</sup>

This definition is similarly recorded by F. A. Klein, who defines *hadd / hudud* as such: “(حدود الله) حد” in its primitive sense means prevention, hindrance, impediment,

limit, boundary.”<sup>188</sup> Again here, as with his definitions of the three forms of punishments within *shari'a*, which was presented above, he does not provide any transliteration into English, but only uses the Arabic script alone in his definitions.

Within *shari'a* there are two categories which separates all duties and obligations into the realms of the right of Allah (*haqq Allah*) and the right of man (*haqq al-'abd* which is also referred to as *al-haqq al-adami*)<sup>189</sup>. Used within the *shari'a* context *hadd* reflects the punishment prescribed by Allah, having been revealed within the Qur'an and the Sunna. The application of these punishments is the right of Allah, or *haqq Allah*.<sup>190</sup> The punishments within this category are argued to be present for three

<sup>186</sup> El-Awa, op. cit., see footnote 1, p35

<sup>187</sup> Tahir-ul-Qadri, Muhammad, *Classification of Islamic Punishments* op. cit., p9. Also see Tahir-ul-Qadri, Muhammad, *Islamic Penal System and Philosophy*, op. cit., p263 also see Lane, Edward William, *An Arabic-English Lexicon*, Book 1, part 2, pp524-525. Also see O'Sullivan, Declan, 'Al-Hudud : الحدود : Definition of Crimes and Punishments stated within the Qur'an and Sunna - Focusing on 'Apostasy', op.cit., p43

<sup>188</sup> Klein, F. A., *The Religion of Islam*, op.cit, p219

<sup>189</sup> Kamali, Mohammad Hashim, *Freedom of Expression in Islam*, op.cit., p231. Also see Safwat, Safia F., 'Offences and Penalties in Islamic Law,' op.cit., p159

<sup>190</sup> El-Awa, op. cit., p1. Also see Haroon, Muhammad, 1993, *Islam and Punishment*, Vision Islamic Publications, Lahore, Pakistan, p28



main reasons : the punishments have been revealed for public interest; the punishments clearly stated in the Qur'an or Sunnah cannot be delivered as either lighter or more harsh than what has been established; when a crime is reported to a shari'a court, a judge does not have any authority to pardon the accused, as neither does any political authority or indeed, the victim of the appropriate offence.<sup>191</sup> The weight of the *hudud* punishments, which strengthens their defence not to be altered under any circumstances is argued by Ahmad 'Abd al-Halim b. Majd al-Din Ibn Taymiyya to be based on the Qur'anic verse 2:187;

تِلْكَ حُدُودُ اللَّهِ فَلَا تَقْرُبُوهَا

“These are the limits of Allah. Do not transgress them.”<sup>192</sup>

Muhammad Tahir-ul-Qadri, also quotes verse, 2:229 as :

تِلْكَ حُدُودُ اللَّهِ فَلَا تَعْتَدُوهَا وَمَنْ يَتَعَدَّ حُدُودَ اللَّهِ فَأُولَئِكَ هُمُ الظَّالِمُونَ

These are the limitations imposed by Allah. Don't cross them. And those who defy the limitations of God are indeed the transgressors.<sup>193</sup>

A very similar definition can be found in *Al-Hedaya*, which gathers the three types of punishment methods together and also indicates that *hudud* is applicable to both believers of Islam and also non-Muslims :

*Hudood* (sic) is the plural of *hadd*; and *Hadd* in its primitive sense signifies obstruction; whence a porter or gatekeeper is termed the *haddad*, or obstructor, from his office of prohibiting people from entering. In law it expresses the correction appointed and specified by the law on account of the right of God, and hence the extension of the term *Hadd* or retaliation is not approved, since retaliation is due as a right of man, and not as a right of God; and in the same manner, the extension of it to *Ta'zeer* – تعزير (or discretionary

<sup>191</sup> Ibid., p1 El-Awa also cited 'Uda, 'Abd al-Qadir, *Tashri' al-Jina'i al-Islami Muqaranan bi al-Qunan al Wad'l*, Cairo, Vol. I, 1959, p79 and Kasani, 'Ala al-Din Abu Bakr b. Mas'ud, *Badai' al-Sanai'* Cairo, Vol II, 1328/1910, p33-56

<sup>192</sup> El-Awa Ibid., p1. Also see Ibn Taymiyya, Ahmad 'Abd al-Halim b. Majd al-Din, *al-Siyasat al-Shari'iya*, Cairo, 1952, p69-70, p125

<sup>193</sup> Tahir-ul-Qadri, Muhammad, *Islamic Penal System and Philosophy*, op. cit, p262. Also see O'Sullivan, Declan, 'Al- Hudud : الحدود : Definition of Crimes and Punishments stated within the Qur'an and Sunna - Focusing on 'Apostasy', op.cit., p44

chastisement) is not approved, as *Ta'zeer* is specifies of correction not specified or determined by any fixed rules of law, but committed to the discretion of the *Qazi*. The original design in the institution of *Hadd* is determent, that is, warning people from the commission of offensive actions : and the absolution of the person punished is not the original design of it, as is evident from its being awarded to infidels in the same manner as to Muslims.<sup>194</sup>

Before a detailed analysis of the Qur'anic Surah and ayah which are used to argue in defence of the supplied *hadd* punishments for *irtidad* and *ridda*, it is appropriate to clarify the classification of this crime as a genuine *hadd*. The different interpretations of the relevant Qur'anic ayah is a necessary point to raise, as this issue is an extremely important one to assess.

There is a general understanding within most of the Islamic *madhhab* that there are six offences which are recognised and accepted as *hudud*. The six *hadd* are; 1; drinking alcohol (wine) *Shurb* : شرب – or *khamr* or *Shurb al-khamr* }<sup>195</sup>, 2; theft [*sariqa* – سرقة], 3; armed robbery/dacoity [*qat' al-Tariq* – قطع الطريق and also known as *hiraba* – الحاربة ]<sup>196</sup>, 4; adultery or illicit sexual intercourse/fornication [*zina* – زنا ], 5; false accusation or insinuation of *zina* with a married man or women [*qadhif* – قذف ] and 6; apostasy [*ridda* – ردة or *irtidad* – ارتداد ]. Tahir-ul-Qadri argues that these six offences are categorised as genuine *hudud* and he also adds a seventh *hadd*, as the crime of 'sedition' [*baghawat*].<sup>197</sup> This crime is also referred to

<sup>194</sup> *Al-Hedaya*, Vol. II (Hanafi Manual) : *Book VII of Hudud, or Punishments*, Serial number 3781, from *e:\Islamica\Nawbase\Nawbase.tex* on CD Rom *islamica : Digital Library of Islamic Software*, Islamic Computing Centre, London, [ [www.ummah.org/icc](http://www.ummah.org/icc) ]. Also see O'Sullivan, Declan, '*Al-Hudud* : الحدود : Definition of Crimes and Punishments stated within the Qur'an and Sunna - Focusing on 'Apostasy', *ibid.*, p44

<sup>195</sup> "*Khamr* or *khamarah*, which originally means 'it veiled or covered or concealed' a thing and wine is called *khamr* as it veils the intellect. *Khamr* is differently explained as meaning what intoxicates, of the expressed juice of grapes, or the juice of grapes when it has effervesced and thrown up forth and become freed therein and still, or it has become a common application to intoxicating expressed juice of anything, or any intoxicating thing that clouds or obscures the intellect." *Shurb al-khamr* means "drinking of wine," Safwat, Safia F., '*Offences and Penalties in Islamic Law*,' *op. cit.*, p159 and p180 in footnote 50, and p154, p159

<sup>196</sup> El-Awa, Mohamed Selim, *op. cit.* p52. Also see Safwat, Safia F., '*Offences and Penalties in Islamic Law*,' *Ibid.*, p154, p163. Dacoity derives from the Hindu word *dakaiti*, to mean the 'act of gang-robbery,' Sykes, J.B. (Ed.), *The Concise Oxford Dictionary of Current English*, 1988, *op.cit.*, p238

<sup>197</sup> Tahir-ul-Qadri, Muhammad, *Islamic Penal System and Philosophy*, *op. cit.* p260, p341 and 397 also see Tahir-ul-Qadri, Muhammad, *Classification of Islamic Punishments*, *op.cit.*, p6



as 'rebellion' [*baghy*]<sup>198</sup> and 'dissension' [*al-baghi* – البغي].<sup>199</sup> Safia Safwat also defines the crimes of *hudud* as seven, listing them as :

Hudud offences are seven: 1) adultery or unlawful intercourse (*zina*), 2) slander or false accusation of unlawful intercourse (*qadhif*), 3) drinking wine (*shurb al-khamr*), 4) theft (*sariqah*), 5) highway robbery (*qat' al-tariq* or *qarabah* [*sic*]<sup>200</sup>), 6) apostasy [*sic*] (*ridda*), 7) rebellion (*baghy*). The punishments laid down for these offences are : the death penalty, either by stoning (the more severe punishment for unlawful intercourse) or with the sword (for highway robbery with homicide) or cutting off a hand and/or foot (for highway robbery without homicide and for theft); and in other cases, flogging with various numbers of lashes.<sup>201</sup>

As can be noted, the punishments are listed here for only three of the *hudud*, with the death penalty being applied on the crimes of unlawful intercourse, theft and highway robbery that also involves murder. However, nothing is stated here as the punishment for apostasy.<sup>202</sup>

Ahmad Abd al-Aziz al-Alfi provides an equally broad range of the jurist's differing understanding in the official numbers of relevant crimes :

Jurists differ on the number of *Hudud* offenses. Some list seven such crimes : theft, highway robbery, adultery, defamation (false accusation of adultery), wine drinking, apostasy, and rebellion. Some jurists omit rebellion, while others restrict the list to the first four crimes only, classifying wine drinking and apostasy as crimes of *ta'zir*, since neither the Qur'an nor the Sunna prescribed specific penalties for them. A penalty imposed by virtue of being a divine right means that the proscription is necessary for the protection of a fundamental public interest.<sup>203</sup>

<sup>198</sup> Safwat, Safia F., 'Offences and Penalties in Islamic Law,' op. cit., p154, p169. Also see Kamali, Mohammad Hashim, op. cit., p199

<sup>199</sup> Khadduri, Majid, 1955, *War and Peace in the Law of Islam*, op.cit., p77.

<sup>200</sup> It is important to note that apart from here, Safwat cites 'highway robbery' as *harabah* throughout the article, as it is also spelt throughout all the other literature covered on this topic, thus, this was just an unfortunate spelling mistake, on p163-167, Safwat, Safia F., 'Offences and Penalties in Islamic Law,' in *The Islamic Quarterly*, op.cit., p154

<sup>201</sup> Safwat, Safia F., *ibid.*, p154.

<sup>202</sup> Safwat does discuss the punishment for apostasy on p167-169 in his article, and this will be covered in detail below here.

<sup>203</sup> Al-Alfi, Ahmad Abd al-Aziz, 'Punishment in Islamic Law' in M. Cherif Bassiouni, (ed.) *The Islamic Criminal Justice System*, Oceana Publications Inc., New York, 1982, p227. Also see

Abdullahi Ahmed An-Na'im suggests that one of the very fundamental questions in determining the specific number of *hudud* and correctly defining each individual *hadd* depends entirely on the given source where they are derived from. It has to be established whether they are restricted to crimes for which the punishments are taken particularly from the Qur'an or whether they include other offences where the Sunna alone defines the punishments. He argues that "the position taken by the majority of the founding jurists is that *hudud* are offences for which punishment is strictly prescribed by *either* the Qur'an or Sunna."<sup>204</sup> [italics from original text.]

Thus, according to this view there are six *hudud* and An-Na'im cites the relevant Qura'nic *ayah* which define the punishments : *sariqa* - السرقة (theft), for which the verse 5: 38 of the Qur'an prescribes the amputation of the hand<sup>205</sup>; *hiraba* - الحراة (rebellion or highway robbery); where verse 5:33 provides several possibilities of punishments for this offence; death by crucifixion, cross-amputation of one hand and the foot on the opposite side, or banishment from the territory in which the crime was committed.<sup>206</sup> *Al-zina* - الزنا (fornication) is referred to in 24: 2, which sets out one hundred lashes as the punishment:

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O'Sullivan, Declan, 'Al-Hudud : الحدود : Definition of Crimes and Punishments stated within the Qur'an and Sunna - Focusing on 'Apostasy', op.cit., p45

<sup>204</sup> An-Na'im, Abdullahi Ahmed, *Toward an Islamic Reformation : Civil Liberties, Human Rights and International Law*, Syracuse University Press, 1990, p108. Also see O'Sullivan, Declan, 'Al-Hudud :

الحدود : Definition of Crimes and Punishments stated within the Qur'an and Sunna - Focusing on 'Apostasy', ibid., p45

<sup>205</sup> "Theft is a crime and the thief – male or female – must be brought to justice. To punish the thief, you are to cut off his or her hands to the wrist; in this way you may make an example of them, thus deferring others from committing the same crime. And God is Exalted in power, Most merciful." [5:39], Turner, Colin, *The Quran : A New Interpretation*, op.cit., p63. The same verse is quoted as 5:41 in Ali, Abdullah Yusuf, *The Holy Qur'an : Text, Translation and Commentary*, 1969, Sh. Muhammad Ashraf, Kashmiri Bazar, Lahore, Pakistan, Three Volumes, Vol. I, p254

<sup>206</sup> "The punishment of those who wage war against God and His Prophet, and who rampage about the land, pillaging and plundering and spreading corruption wherever they tread, is this: death by hanging, or crucifixion, or the cutting off of hands and feet from opposite sides, or, at the very least, exile from the land. This will be their humiliating punishment in this world; in the world to come a greater and far more humiliating punishment awaits them all -" [5:34] Turner, Colin, *The Quran : A New Interpretation*, Ibid., p62. The same verse is quoted as 5:36 in Ali, Abdullah Yusuf, *The Holy Qur'an*, Ibid., Vol I, p252-253



الزَّانِيَةُ وَالزَّانِي فَاجْلِدُوا كُلَّ وَاحِدٍ مِّنْهُمَا مِئَةَ جَلْدَةٍ وَلَا تَأْخُذْكُمْ بِهِمَا رَأْفَةٌ فِي دِينِ اللَّهِ إِنْ كُنْتُمْ تُؤْمِنُونَ بِاللَّهِ وَالْيَوْمِ الْآخِرِ وَلْيَشْهَدْ عَذَابَهُمَا طَائِفَةٌ مِّنَ الْمُؤْمِنِينَ

If any woman or man be found guilty of adultery or unlawful intercourse, you are – provided that you believe in God and the Last Day – instructed to flog them with one hundred strokes of the (leather) whip. Do not let pity and compassion overwhelm you when executing this Divine decree. Furthermore, let a number of believers witness their punishment. [24:3]<sup>207</sup>

However, within the *ahadith* (Traditions) or Sunna, this crime is punished by *rajm* – رجم (the stoning to death) if the offender is married.<sup>208</sup> A perfect example of the relevant *hadith* is one narrated by Buraydah, which can be found in the collection of *hadith* by Sahih Muslim. This particular *hadith* presents the different punishments for men and women. It indicates that men may repent and not be lashed, and also that there would be a delay for the punishment that is offered to a woman, if became pregnant due to the act. Once the child is born then the penalty of *rajm* – رجم (the stoning to death) would occur.<sup>209</sup>

<sup>207</sup> Turner, Colin, *The Quran : A New Interpretation*, Ibid., p209. The same verse is quoted as 24:2 in Ali, Abdullah Yusuf, *The Holy Qur'an*, Ibid., Vol. II, p896

<sup>208</sup> An-Na'im, Abdullahi Ahmed, *Toward an Islamic Reformation*, op. cit., p214 in footnote 17. Also, Mohammad Iqbal Siddiqi, states "Islam awards two different punishments for two different categories of illicit sexual relations. For fornication (i.e. between two married persons) it prescribes one hundred stripes both for the man and the woman (24:2). And for adultery it is stoning to death as we find in the *hadith*," Siddiqi, *The Penal Law of Islam*, op.cit., p55 and "As we find in the *hadith*, punishment for adultery is stoning to death," Ibid., p56.

<sup>209</sup> From the *hadith* collection of Sahih Muslim, this *hadith*, narrated by Buraydah reads as : Ma'iz ibn Malik came to Allah's Apostle (peace\_be\_upon\_him) and said to him: Messenger of Allah, purify me. Thereupon he said: Woe to you, go back, ask forgiveness of Allah and turn to Him in repentance. He (the narrator) said that he went off a little way, then came and said: Messenger of Allah purify me. The Messenger of Allah said: Woe be upon you, go back and ask forgiveness of Allah and turn to Him in repentance. He (the narrator) said that he went off a little way, then he came and said: Allah's Messenger, purify me. Allah's Apostle (peace\_be\_upon\_him) said as he had said before. When it was the fourth time, Allah's Messenger (peace\_be\_upon\_him) said: From what am I to purify you? He said: From adultery. Allah's Messenger (peace\_be\_upon\_him) asked if he had been mad. He was informed that he was not mad. He said: Has he drunk wine? someone stood up and smelt his breath but noticed no smell of wine. Thereupon Allah's Messenger (may peace) be upon him) said: Have you committed adultery? He said: Yes. He made a pronouncement about him and he was stoned to death.

The people had been (divided) into two groups about him (Ma'iz). One of them said: He has been undone for his sins have encompassed him, whereas another said: There is no repentance more excellent than the repentance of Ma'iz, for he came to Allah's Apostle (peace\_be\_upon\_him) and placing his hand in his (in the Holy Prophet's) hand said: Kill me with stones.



*qadhf* - القذف (unproven accusation of fornication) receives eighty lashes, as stated in 24:4.<sup>210</sup> For *sukr* (intoxication), the Qur'an disapproves of intoxication and prohibits the drinking of wine, but does not provide a specific punishment for either offensive act. An-Na'im declares that the Prophet is reported to have said that it is *haram*, a religious sin, to take any substance in however small an amount, if taking that substance in large amounts would cause intoxication. The Sunna is also reported to have prescribed forty lashes as punishment for *sukr*.<sup>211</sup>

Considering the sixth *hadd*, An-Na'im acknowledges that although the Qur'an disapproves of *ridda* - ردة (apostasy from Islam), it does not provide any punishments for this act in this life. He argues that the punishment seems to be based in the Sunna, which is cited as the authority for prescribing the death penalty for *ridda* - ردة.<sup>212</sup>

Mohammad Iqbal Siddiqi also presents seven *hudud*, each of which, he claims, having unequivocal punishments stated within - thus defined - by the Qur'an and the Sunnah.

(This controversy about Ma'is) remained for two or three days. Then came Allah's Messenger (peace\_be\_upon\_him) to them (his companions) as they were sitting. He greeted them with a salutation and then sat down and said: Ask forgiveness for Ma'iz ibn Malik. They said: May Allah forgive Ma'iz ibn Malik. Thereupon Allah's Messenger (peace\_be\_upon\_him) said: He (Ma'iz) has made such a repentance that if that were to be divided among a people, it would have been enough for all of them.

He (the narrator) said: Then a woman of Ghamid, a branch of Azd, came to him and said: Messenger of Allah, purify me. Thereupon he said: Woe to you; go back and beg forgiveness from Allah and turn to Him in repentance. She said: I find that you intend to send me back as you sent back Ma'iz ibn Malik. He (the Holy Prophet) said: What has happened to you? She said that she had become pregnant as a result of fornication. He (the Holy Prophet) said: Is it you (who has done that)? She said: Yes. He (the Holy Prophet) said to her: (You will not be punished) until you give birth to that which is there in your womb. One of the Ansar became responsible for her until she was delivered (of the child). He (that Ansar) came to Allah's Apostle (peace\_be\_upon\_him) and said: The woman of Ghamid has given birth to a child. He (the Holy Prophet) said: In that case we shall not stone her and so leave her infant with none to breast-feed him. One of the Ansar got up and said: Allah's Apostle, let the responsibility of his nursing be upon me. She was then stoned to death.

This is found in the *hadith* collection of Sahih Muslim, *hadith* number : 4205, in *e:\winhadis\winhadis.tex* on CDRom *Islamica : Digital Library of Islamic Software*, Islamic Computing Centre, London, [ [www.ummah.org/icc](http://www.ummah.org/icc) ]

<sup>210</sup> "As for those who accuse chaste female believers of adultery or unlawful intercourse, but fail to produce four witnesses to support their allegations, - flog them with eighty strokes of the (leather) whip. Furthermore, do not allow them to give evidence ever again, whatever the matter, for they are transgressors who have over-stepped the bounds of the Divine law - " [24:5] Turner, Colin, *The Quran : A New Interpretation*, op. cit, p209. The same verse is quoted as 24:4 in Ali, Abdullah Yusuf, *The Holy Qur'an*, op. cit, Vol II, p897

<sup>211</sup> An-Na'im, *Toward an Islamic Reformation*, op. cit., p214, in footnote 19,

<sup>212</sup> An-Na'im, *Ibid.*, p214, in footnote 20. Also see O'Sullivan, Declan, '*Al-Hudud : الحدود* : Definition of Crimes and Punishments stated within the Qur'an and Sunna - Focusing on 'Apostasy', op.cit., p47



He lists the *hudud* and their punishments for adultery which, in the case of a married perpetrator, receives *rajm* – رجم (the stoning to death). For sexual promiscuity (*zina* - زنا), for an unmarried person, the convicted person will receive one hundred lashes. For a false accusation of such an act (*qadhif* - قذف) or a false insinuation of *zina* against a married woman or man, the offender will receive eighty lashes. For apostasy, (*irtidad* – ارتداد), which he defines as the “renunciation or abandonment of Islam by one who professes Islamic faith. It is punishable by death.”<sup>213</sup> For drinking wine (*shurb*: شرب) Siddiqi presents the offenders punishment to be eighty lashes. For theft (*sariqa* - سرقة), it is argued to be punishable by cutting off one of the offenders hands, although Siddiqi does not state whether it is to be the left or the right hand at first, or in any particular order. For dacoity or robbery by gangs (*qat' al-tariq* قطع الطريق or *hiraba* – حرابة), when in robbery alone the punishment is the loss of the protagonist's hands and/or feet but for robbery which involves murder of the victim(s) the convicted person will have the death penalty, stated here as being delivered by the sword.<sup>214</sup>

Muhammad Haroon<sup>215</sup> defines *hudud* (singular : *hadd*) as including seven crimes. He suggests that :

There are seven *hadd* offences. Some people debate whether one or two of the seven are really correctly described as *hadd*. But all seven share the feature of the fixed penalty.<sup>216</sup>

Initially he defines *hadd* to mean a prohibition or a limitation. The *hudud* are not personal rights but the rights of God. He states that the punishments are fixed and cannot be varied once a person is found guilty and explains that this means that once a

<sup>213</sup> Mohammad Iqbal Siddiqi, *The Penal Law of Islam*, op.cit., p51-52

<sup>214</sup> Ibid., p51-52

<sup>215</sup> Muhammad Haroon is an Austrian national, who converted to Islam. In the foreword of his work *Islam and Punishment* he acknowledges that he has been influenced, motivated and inspired to write after having read the work of Muhammad Tahir-ul-Qadri (his various work is cited several times in this research) who covers the area of *shari'a* and the whole nature of the Islamic penal system. However, he also states that his own views are not identical with those of Muhammad Tahir-ul-Qadri, but he uses the work as a solid basis for his own analysis. Haroon, Muhammad, 1993, *Islam and Punishment*, Vision Islamic Publications, Lahore, Pakistan, p5

<sup>216</sup> Haroon, Muhammad, 1993, *Islam and Punishment*, Ibid, p29. Also see O'Sullivan, Declan, 'Al-Hudud : الحدود : Definition of Crimes and Punishments stated within the Qur'an and Sunna - Focusing on 'Apostasy', op.cit., p48

person is convicted, the *hudud* are the only penalties worthy for implementation. Also, once the sentence has been given, it must then be carried out, as it cannot be reduced or any forgiveness to be considered.<sup>217</sup>

One the seven *hudud* he lists is that of sedition. This crime consists of taking up arms against the Islamic state and can include an attempt to murder the Caliph, the Head of State. It includes the rising up of rebellion and any equivalent conflict. Haroon compares sedition with the Western crime of treason. The *hadd* punishment for sedition is death and he explains that this would also be the case in the West's response to treason. Sedition is aimed purely against the powerful and leadership.

The second *hadd* he refers to is that of robbery with violence, or armed robbery. As the crime involves robbery or murder included within it, Haroon argues that "at its most serious, this offence can actually consist of waging war on the Islamic State."<sup>218</sup> He then describes the variations of the punishments, which indicates differing forms of the death sentence, depending on the level of force induced by the robbers and/or murderers during the crime:

The punishments vary according to the gravity of the robbery with violence. If the armed robber steals and murders his victim, he is hung. If he murders, but does not steal, he is beheaded. If he simply steals, he has a hand and the opposing foot amputated. If the robber simply terrorises, but neither steals or kills, he is to be imprisoned.<sup>219</sup>

In comparison, Haroon suggests that armed robbery including murder would equally receive the death penalty in several Western legal systems. The *hadd* offence specifically applies to those who would have the power to defy the authority of the state, with the armed robbery potentially expanding into some broader rebellion. Thus, a young mugger would not fit into the category of a *hadd* offender. Haroon states that the third related *hadd* which is linked to the first two offences he described, as being focused on attacking Islam, is that of apostasy. He defines apostasy as an offence by a Muslim who gives up and renounces Islam. "The punishment is beheading for men, but only imprisonment for women. This is one of

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<sup>217</sup> Haroon, Ibid., p28

<sup>218</sup> Ibid., p30



the many privileged treatment Islam gives to women.”<sup>220</sup> As Haroon explains, apostasy is not an offence in the western legal system, but he indicates that, after a study of the offence, it is comparable with the act of treason :

The Apostate is not simply the person afflicted with doubts, but a rebel who attacks and denounces his country. In the Islamic State, citizenship is directly based on being a Muslim. So to renounce Islam has political implications. This offence seems to be the ideological companion to the first *hadd* offence, which is Sedition. Someone who turns traitor to the Islamic State may also take the side of the rival, non-Muslim states and in order to do so may give up Islam for Christianity or whatever. The traitor thus adds to his treachery to the state spiritual treachery.<sup>221</sup>

Clearly all the acts that Haroon defines, such as sedition and armed robbery can be consolidated, on the basis that they are all inter-related as being a deliberate attack on the community. However, it important to address whether these acts can also be understood and accepted to be deliberate attacks against Islam and a physical act against the Islamic community, which could also only be seen to be a rejection of any faith in God.

Another classification of *hudud* crimes to number seven, comes from F. A. Klein, whose list of acts which he categorises as formal transgressions, also includes both apostasy and drinking alcohol (specifically that of wine). His list of seven *hudud* are :

The transgressions which are punished by *Hadd* punishments are : (1) adultery, (2) fornication, (3) false accusation of a married person of adultery, (4) apostasy, (5) drinking wine, (6) theft, (7) highway robbery<sup>222</sup>

It is of some interest here, to note how he has divided the given crimes of *hudud*, which may have lead to rise as a total number of seven, instead of a more reduced number, such as that provided by other legal definitions. Klein, seems to have split into two separate categories of a transgression what other jurists would define as the

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<sup>219</sup> Ibid., p30

<sup>220</sup> Ibid., p31. This is an interesting position on women, which will be discussed in further detail below.

<sup>221</sup> Ibid., p31. Also see O’Sullivan, Declan, ‘*Al-Hudud : الحدود* : Definition of Crimes and Punishments stated within the Qur’an and Sunna - Focusing on ‘Apostasy’, op.cit., p48

<sup>222</sup> Klein, F. A., *The Religion of Islam*, op.cit., in footnote 1 on p219

single crime of *zina*. He lists in numbers (1) and (2) as both ‘adultery’ and ‘fornication’ being two separate *hudud*, whereas other jurists include both these acts to be within the generalised crime of *zina*. Added to that, if they were included as one *hadd*, his list would have been reduced to the standard number of four *hudud*, (1) *zina* – زنا; (2) *qadhif* – قذف, the false accusation of adultery, (3) theft (*sariqa* – سرقة) and (4) highway robbery, (*qat’ al-tariq* – قطع الطريق or *hiraba* – حرابة), had he not included his fourth and fifth crimes of apostasy and drinking wine.

Interestingly enough, it is also important to emphasise here that in order to support his list of seven crimes, he endeavoured to give further details in defining the relevant punishments for each crime he had listed, and based these punishments on various Qur’anic references and some relevant *hadith*. However, for the first three transgressions in his list, (i.e. adultery, fornication, and false accusation of a married person of adultery) the detailed analysis and assessment of the crime and punishments provided is only found in footnotes as there is no main text.<sup>223</sup> For his final three transgressions, (i.e. the use of alcohol, theft and highway robbery) these are covered in some detail in the main text, plus they are also accompanied with their own relevant footnotes.<sup>224</sup> Interestingly enough, which is an ideal defence to support the very reason for such a need of the research this thesis undertakes, is the fact that there is no main text and no other footnotes that refer in any way, to the crime Klein lists as number four of his seven *hudud* as: that of apostasy. This also clearly shows that there is no reference to relevant Qur’anic verses or any appropriate *hadith* which would have aimed to support the placing of apostasy in the list of *hudud* that was presented.

Therefore, further research was required to seek this information, to then discover that it is argued that there are only four genuine *hudud*, which are specifically listed together with their detailed punishments that are provided for them, within the Qur’an. This list of four does not include the use of alcohol, nor the act alone of apostasy.

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<sup>223</sup> Klein, Ibid., see the text for “Adultery” in footnote 1 on p220, for “Fornication” in footnote 2 on p220-221 and for “False accusation of a married person of adultery or fornication, (قذف)” in footnote 3 on p221



Mohammad Sa'id al-'Ashmawy, the former Chief Justice of the High Court in Cairo, defines *hudud*, or determined punishments, as limits or to set limits to prevent people from committing crimes.<sup>225</sup> However, al-'Ashmawy clarifies the list of the punishments within the *hudud* crimes as being numbered by four : cutting off the hand for theft [*sariqa* – سرقة], lashing for proven adultery [*zina*- زنا], lashing for the false accusation on an innocent woman for being an adulterate [*qadhif* – قذف] and imprisonment or capital punishment for highway robber [*qat' al-tariq* – قطع الطريق or *hiraba* – حرابة]. The punishment of lashing for adultery will be the sentence, if four just witnesses of the crime appear in court. The punishments for highway robbery are imprisonment for the theft alone and capital punishment if a murder occurs on the robberies victim. Concerning the number of official *hudud* crimes, al-'Ashmawy states that :

Some scholars add to these four punishments two more : lashing for drinking alcohol and capital punishment for apostatizing. In my opinion, these two punishments are not determined punishments (*hudud*), which are limited to four. There is no verse in the Qur'an that states one must be punished for drinking alcohol. Neither did the Prophet apply a determined punishment for consumption of alcohol. And concerning apostasy from Islam, the Qur'an says that it is a "religious" sin. What is certain is that the Prophet never used this punishment. The Qur'an respects freedom of belief and condemns fanaticism.<sup>226</sup>

This very point is equally raised by Shaikh Abdul Rahman in his work *Punishment of Apostasy in Islam*, where he unequivocally states that :

In fact, apostasy is treated as a sin and not as a crime by the Qur'an, albeit a very grave sin, but the time for repentance is extended, in God's infinite Mercy, to a lifetime short of the actual death agony. For God's purposes cannot be defeated by defections from the

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<sup>224</sup> Ibid., see the text for "Drunkenness (الشرب)" on p221-222, for "Theft (السرقه)" on p222 and for "Highway Robbery (قطع الطريق)" on p223. Also see the connected information in footnote 1 on p222 and footnotes 1 and 2 on p223

<sup>225</sup> al-'Ashmawy, Muhammad Sa'id, 1998, *Against Islamic Extremism : The Writings of Muhammad Sa'id al'Ashmawy*, Fluehr-Lobban, Carolyn, (editor), University Press of Florida, USA, p99-100

<sup>226</sup> al-'Ashmawy, Muhammad Sa'id, ibid, p101. Also see O'Sullivan, Declan, 'Al-Hudud : الحدود : Definition of Crimes and Punishments stated within the Qur'an and Sunna - Focusing on 'Apostasy', op.cit., p49

Faith of puny mortals, and so the Prophet is enjoined not to worry his soul out, in grief, for those who turn away.<sup>227</sup>

Further on this point concerning alcohol, is the work of 'Ali Muhammad in *Religion in Islam*. He also suggests that :

the Holy Qur'an does not speak of any punishment for the man who drinks wine, but there are *hadith* showing that the Holy Prophet inflicted punishment in such cases. This punishment seems to have been of a very mild type. It, moreover, appears that punishment was inflicted only in cases when a man was intoxicated with drink.<sup>228</sup>

Thus, this raises the point that the punishments are seemingly based on *hadith* alone, which deal with both the crimes of alcohol consumption and apostasy. Mohamed Selim El-Awa also suggests that although the majority of jurists agree on the main classification of *hudud*, some different views are held in both adding to, or reducing the number of crimes defined as *hudud*.<sup>229</sup> He clearly states that

Taking into consideration that a *hadd* punishment is a punishment defined by God in the Qur'an or the Sunnah, it appears to me that only four of the six mentioned offences can be classified as offences of *hudud*. The remaining two, namely apostasy and alcohol drinking, cannot be so classified since neither of them warrants a punishment which has been strictly defined in the words of the Qur'an or the Sunnah.<sup>230</sup>

Similar to this point of view, Shaikh Abdul Rahman supports this position, by stating that

At best, punishment for apostasy can be adopted by way of *ta'zir* and not as a *hadd* specified in the Qur'an. The position would be analogous to breaking a prohibition, for example, with regard to drinking, for which the

<sup>227</sup> Rahman, Shaikh Abdur, *Punishment of Apostasy in Islam*, 1996, Kitab Bhavan, New Dehli, India, p55. [This point of view is also discussed in more detail below, in the work of the Maliki jurist Sulayman b. Khalaf b. Sa'd Baji (d. 494AH), who, in his commentary of *Al-Muwatta'* described apostasy as a sin which carries no prescribed penalty (*hadd*). He argues that such a sin can only be punished under the discretionary punishment of *ta'zir*. Also, the renowned Hanbali jurist Taqi al-Din Ibn Taymiyya agrees on this issue in his work *al-Siyasah al-Shar'iyyah fi Islah al-Ra'i wa'l-Ra'iyyah*.]

<sup>228</sup> 'Ali, Maulana Mohammad, *The Religion of Islam*, op. cit., p759

<sup>229</sup> El-Awa. op. cit., p2

<sup>230</sup> Ibid., p2



Qur'an does not expressly prescribe a definite punishment.<sup>231</sup>

This argument is also clarified by Nu'man 'Abd al-Razzaq al-Samara'i in the introduction of his work *Akham al-murtadd fi al-shariat al-Islamiyyah*:

In the Book (the Qur'an) I found sometimes 'al-riddah' [sic] mentioned expressly and sometimes by import. I followed up the verses in the various commentaries and I arrived at the conclusion that the punishment of the apostate (and that is death) is not to be found in the Book, but finds mention in the Sunnah only.<sup>232</sup>

The famous and well respected scholar Shaykh al-Islam Imam Taqi al-Din Ahmad Ibn Taymiyya defines the categorised crimes of *hudud* to total only four, in his work *al-Hisba fi al-Islam*, "the prescribed penalties (*hadd* : limit) [include] brigandage, theft, illicit sexual intercourse and wine drinking."<sup>233</sup> Brigandage here, would refer to *qat' al-tariq* / *hiraba* – حرابة (armed robbery). His list of four *hudud* makes an interesting choice, as he excludes *qadhf* : قذف (which he may well include within *zina* – زنا), 'sedition' - *baghi* – بغى (which is the, perhaps, peripheral seventh *hudud*) and he completely excludes *ridda* ردة / *irtidad* : ارتداد. However, he does include *shurb* : شرب as a formal *hadd*, which is argued as a questionable crime by others.

Chafik Chehata makes another reference to six crimes to be included as *hudud*. Interestingly, his list includes the drinking of alcohol, but excludes the act of apostasy. As Syed Habibul Haq Nadvi, Chehata also makes no mention of *qisas* as a form of penalties within *Shari'a*, again referring only to *ta'zir* and *hudud* as the forms of punishments held. As can be seen by his list of *hudud* offenses, Chafik Chehata has

<sup>231</sup> Rahman, Shaikh Abdur, *Punishment of Apostasy in Islam*, op.cit., p135. Also see O'Sullivan, Declan, 'Al-Hudud : الحدود : Definition of Crimes and Punishments stated within the Qur'an and Sunna - Focusing on 'Apostasy', op.cit., p49

<sup>232</sup> Ibid., p12, Also see al-Samara'i, Nu'man 'Abd al-Razzaq, 1968, *Akham al-murtadd fi al-shariat al-Islamiyyah*, op.cit., p12. Also see O'Sullivan, Declan, 'Al-Hudud : الحدود : Definition of Crimes and Punishments stated within the Qur'an and Sunna - Focusing on 'Apostasy', op.cit., p49-50

<sup>233</sup> Ibn Taymiya, Shaykh al-Islam Imam Taqi al-Din Ahmad, (a.k.a. Ahmad 'Abd al-Halim b. Majd al-Din Ibn Taymiyya) *al-Hisba fi al-Islam*, (no date given), Quote taken from the translated version, entitled *Public Duties in Islam : The Institution of the Hisba*, 1982, Translated by Muhtar Holland, The Islamic Foundation, Leicester, England, p54

also included as the first *hadd* offence to be homicide, as was done by Syed Habibul Haq Nadvi, in his list of the crimes. It will be an aim of this research to emphasise that this crime should not be included as a *hadd*, but it will be expressed in further below, that the act of killing is more than adequately covered by a very different form of punishment, under *qisas*. However, in assessing Chehata's understanding of legal punishments, he declares :

Islamic criminal law is based on a primary distinction between fixed penalties (*hudud*) and discretionary penalties (*ta'zir*). Fixed penalties are provided for six crimes only : homicide, carnal knowledge of a woman, false accusation of carnal knowledge, theft, the drinking of wine, armed robbery and rebellion. Apart from these crimes with their fixed punishments, the *kadi* [sic] has power to pass a variety of sentences at his discretion, to punish every sort of violation of the law. In this way, the door was left open for very extensive rule-making.<sup>234</sup>

Clearly, Chafik Chehata's list of *hudud* crimes includes the six acts of *hudud* crime in the order of *zina* – زنا, *qadhif* – قذف, *sariqa* – سرقة, *Shurb* – شرب, *qat' al-Tariq* (قطع الطريق) also known as *hiraba* – حرابة and *baghi* – بغى that have been translated above. His own reference to them is in another, but equally understandable, word form. A fascinating point is raised in this list, in that he has not only just excluded apostasy [*ridda* – ردة or *irtidad* – ارتداد], but of more relevance to the punishing of this act, he argues at the end that the ability is there, within *Shari'a*, for a vast array of extensive rule-making can be developed by jurists. This clearly supports the view that, if apostasy is not listed as a fixed punishment, among the others that are stated clearly within the Qur'an, then the punishments and penalties delivered for such cases are human-made, by jurist decisions within *ta'zir*, as opposed to it being a single sentence of death, having been revealed by God.

Mohammad Suleman Siddiqi, in his article 'The Concept of *Hudūd* and its Significance' argues that the list :

According to the Qur'an and the Sunna of the Prophet,  
the crimes falling under *Hadd* are five :

<sup>234</sup> Chehata, Chafik, 'Islamic Law' in Chapter 2, 'Structure and the Divisions of the Law' in Volume II, *The Legal Systems of the World, Their Comparison and Unification*, René David, (Ed.) of *The International Encyclopedia of Comparative Law*, 1974, J. C. B. Mohr (Paul Siebeck), Tübingen, p140



1. Adultery (*zina*) --- (زنا)
2. Theft (*sarqah*) --- (سرقة)
3. Alcoholism (*shurb-e-khamr*) --- (شرب)
4. False accusation of adultery (*qadhaf*) --- (قذف)
5. Highway Robbery (*qat'-e-tariq*) --- (قطع الطريق)<sup>235</sup>

Here again in this list, there is an inclusion of the use of alcohol, but there no reference to the acts of apostasy or blasphemy and it also does not mention the generally held seventh *hadd*, of sedition or rebellion. Another interesting point is that, although having included the consumption of alcohol as a *hadd*, Siddiqi then introduces the punishment for this crime by acknowledging that :

All those things which intoxicate a person stand forbidden by the Qur'an and the Sunna of the Prophet. However, the Qur'an does not prescribe any specific punishment for alcoholism.<sup>236</sup>

This fact raises the question that, if the *hudud* crimes are those acts that have been detailed with specific punishments stated within the Qur'an, and yet the author recognises that no specific verse does exist to clearly present the penalty for such an act, then this, in itself, will support the defence that the crimes of *hudud* mentioned in the Qur'an are of the four only. These four crimes found within the Qur'an, do not include either apostasy (or blasphemy) or the consumption of alcohol.

Syed Habibul Haq Nadvi makes no mention of *qisas* as a form of penalties within *Shari'a*, suggesting that there are two forms of punishment in *Shari'a*, that of *ta'zir* and *hudud*. However, reviewing his list of *hudud* crimes, it becomes clear that he has included the crimes which are dealt with under *qisas*, i.e. the different forms of someone killing another person, through either intentional or unintentional circumstances, as the first form of *hudud*. The details of the crimes and the punishments within *qisas* will be dealt with in another chapter below.

Syed Habibul Haq Nadvi cited his list of *hudud* crimes to number seven, all of which, he argues, are listed - together with their punishments - within the Qur'an. As he postulates, the punishment for a *hadd* crime

<sup>235</sup> Siddiqi, Mohammad Suleman, 'The Concept of *Hudūd* and its Significance,' op.cit., p192

<sup>236</sup> Ibid., p201

.....is awarded according to the injunctions of the Qur'an to seven categories of offenders. These are punishments fixed by Allah because they are the violations of the limits (*Hudud*) set by Allah Himself. Among them are :

- 1.The execution for murder and manslaughter
- 2.Amputation of hand for theft
- 3.Stoning for adultery and hundred lashes for fornication
- 4.Eighty lashes for slander
- 5.Death for apostasy
- 6.Eighty lashes for inebriation, and
- 7.Death for highway robbery (*Qata al-Tariq*)<sup>237</sup>

He suggests that these penalties are fixed, therefore they cannot be amended, as being higher or lower levels by any judge (*qadi*) or legislators. In terms of *taz'ir*, Syed Habibul Haq Nadvi assesses *taz'ir* punishment as a discretionary penalty, imposed by the decision of a judge, that would be dependent on the given circumstances of the relevant crime committed. "Since *taz'ir* punishment has not been fixed by the Qur'an, the judge can either imprison the criminal or impose a fine on him, exile him or give him a warning."<sup>238</sup>

However, it is important to discuss the verses of the Qur'an that are presented by Syed Habibul Haq Nadvi, in his defence that the 'death penalty' is found in the Qur'an. Firstly, before presenting verses 3:86-89 he argues that : "The Qur'an regards apostasy as a sin."<sup>239</sup> One would ask the question then, that: 'if the act of apostasy is acknowledged to be a sin and not a crime, then surely this does not include it as a *hadd* crime?' The answer to this question will have been addressed in this Chapter above, and the assessment of the Qur'anic verses he quotes will be dealt with in Chapter Three.

To present the text here of the verses he refers to, will be useful for immediate reference to the message they provide. Nadvi cites the verses 3:86-89 as specifically

<sup>237</sup> Nadvi, Syed Habibul Haq, *Islamic Legal Philosophy and the Qur'anic Origins of the Islamic Law (A Legal-Historical Approach)*, 1989, Academia, The Centre for Islamic, Near and Middle Eastern Studies, Planning & Publication, Durban, South Africa, p81

<sup>238</sup> Nadvi, Syed Habibul Haq, *Islamic Legal Philosophy and the Qur'anic Origins of the Islamic Law*, *ibid*, p82

<sup>239</sup> Nadvi, Syed Habibul Haq, *Islamic Legal Philosophy and the Qur'anic Origins of the Islamic Law*, *ibid*, p95



dealing with apostasy. The text he uses can be found in the translation by Abdullah Yusuf Ali, which reads as:

كَيْفَ يَهْدِي اللَّهُ قَوْمًا كَفَرُوا بَعْدَ إِيمَانِهِمْ وَشَهِدُوا أَنَّ الرَّسُولَ حَقٌّ  
وَجَاءَهُمُ الْبَيِّنَاتُ وَاللَّهُ لَا يَهْدِي الْقَوْمَ الظَّالِمِينَ

How shall Allah Guide those who reject Faith after they accepted it and bore witness that the Apostle was true and that Clear Signs had come unto them? but Allah guides not a people unjust. (3:86)

أُولَئِكَ جَزَاءُهُمْ أَنْ عَلَيْهِمْ لَعْنَةُ اللَّهِ وَالْمَلَائِكَةِ وَالنَّاسِ أَجْمَعِينَ

Of such the reward is that on them (rests) the curse of Allah, of His angels, and of all mankind;- (3:87)

خَالِدِينَ فِيهَا لَا يُخَفَّفُ عَنْهُمْ الْعَذَابُ وَلَا هُمْ يُنْظَرُونَ

In that will they dwell; nor will their penalty be lightened, nor respite be (their lot);- (3:88)

إِلَّا الَّذِينَ تَابُوا مِنْ بَعْدِ ذَلِكَ وَأَصْلَحُوا فَإِنَّ اللَّهَ غَفُورٌ رَحِيمٌ

Except for those that repent (even) after that, and make amends; for verily Allah is Oft-Forgiving, Most Merciful. (3:89)<sup>240</sup>

As mentioned earlier, the detailed assessment of the Qur'anic verses he quotes will be dealt with in Chapter Three.

<sup>240</sup> Nadvi, Syed Habibul Haq, *ibid.*, p95. Also the same text of these Qur'anic verses can be found in English translated version of the Qur'an by Ali, Abdullah Yusuf, *The Holy Qur'an*, op.cit., Volume One, p145-146

However, another issue raised by Nadvi is of some relevant interest, as it is related to the main hypothesis of this thesis. He provides the following quote, which states that :

The Prophet has prescribed the *Hadd* punishment for an apostate, that is execution. The four schools of law are also unanimous on this issue.<sup>241</sup>

The important point to be raised here are the very sources of information that Nadvi quotes from, in defending the citation that the “The Prophet has prescribed the *Hadd* punishment for an apostate.” In his ‘footnote 10’ after this point he makes, Nadvi cites the work of Mohammad Iqbal Siddiqi, *The Penal Law of Islam*, Kazi Publications, Lahore, 1972, and that of Shaikh Abdur Rahman, *Punishment of Apostasy in Islam*, Institute of Islamic Culture, Lahore, 1972.

This present researcher has also used the books of these two authors, but the two copies used are slightly ‘newer’ editions, having been published some years later and in other locations, as they are cited in the bibliography of this thesis as : Mohammad Iqbal Siddiqi, *The Penal Law of Islam*, 1991, International Islamic Publishers, New Delhi and Shaikh Abdur Rahman, *Punishment of Apostasy in Islam*, 1996, Kitab Bhavan, New Dehli, India.

In fact, although these ‘newer’ editions are updated in the year they were published and they have been presented by different publishers, the information *within them* is exactly the same as the original books, as cited by Nadvi. Siddiqi, in *The Penal Law of Islam*, certainly agrees with the argument that the Prophet Muhammad propagated the death penalty for apostasy. This present research has shown that in the work of Shaikh Abdur Rahman, in *Punishment of Apostasy in Islam*, Rahman unequivocally promotes the diametrically opposite point of view, that the Prophet Muhammad did not punish the act of apostasy with the death sentence, when it was related to an individual who left the Islamic community *in this act on its own*, thus, with no other crime/s attached to those convicted as apostates. Rahman also states that the Prophet certainly did not categorise apostasy within the *al-hudud* crimes, hence it was not considered to be a *hadd*, as suggested by Nadvi. The detailed explanation of this point is provided in the next Chapter.

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<sup>241</sup> Syed Habibul Haq Nadvi, *ibid.*, p96.



### 1.5 The punishment of female apostates.

The issue of how the different sexes are dealt with is a fascinating area. There is a difference of legal opinion between the *madhhab*. According to three of the legal school founders, Muhammad bin Idris Shafi'i,<sup>242</sup> Malik bin Anas bin<sup>243</sup> and Ahmad Ibn Hanbal,<sup>244</sup> they argue that there is no discrimination between the sexes for the punishment given, thus they are both equal to the death penalty, if it is appropriate. However, the fourth founder of the other *madhhab fiqh*, Imam Abu Hanifah<sup>245</sup> disagrees on this point. He argues that women apostates are not to be considered legally eligible for the death sentence. According to Hanafites women are to be kept in prison until they repent, as the Prophet forbid the death sentence for unbelieving women. Opponents of this view believe that women who should be only incarcerated and not given the death penalty occurs purely in the context of unbelieving women who are caught at a time of war and not women who apostatise at any time.<sup>246</sup>

As Sheikh Abdur Rahman suggests that the origin of the death penalty derives from the act of those who physically attack Muslims or the Islamic community, in the specific context of participating in a state of war. This also relates to, and explains, the reason that there is a specified difference of legal opinion by the *maddhab* (Islamic schools of law), where men are to be killed for apostasy but women are to be imprisoned. Women are to be incarcerated and punished five times a day, during the prayer time, until they genuinely consent to repentance and return to the community of Islam.<sup>247</sup> As S. A. Rahman explains, covering this issue :

<sup>242</sup> Muhammad bin Idris Shafi'i's full name is :- Muhammad bin Idris bin Al-'Abbas bin 'Uthman bin Shafi' bin As-Sa'ib bin 'Ubaid bin 'Abd Yazid bin Hashim bin 'Abdul-Muttalib bin 'Abd Manaf Al-Qurashi Al-Makki, found in 'Al-Asqalani, Al-Hafiz Ibn Hajar, (full name - Shihabuddin Ahmad bin 'Ali bin Muhammad bin Muhammad bin Ahmad Al-Kinani Ash-Shafi'i), *Bulugh Al-Maram min Adillat Al-Ahkam: Attainment of the Objective according to Evidence of the Ordinances*, with brief notes from the book *Subul-us-Salam*, by Muhammad bin Ismail As-Sanani, compiled and translated, 1996/1416, Dar-us-Salam Publications, Riyadh, Saudi Arabia, p585

<sup>243</sup> Malik bin Anas bin Malik's full name is :- Malik bin Anas bin Malik bin Abu 'Aamir al-Asbahi Malik, Ibid., p588

<sup>244</sup> Ahmad Ibn Hanbal's full name is :- Ahmad bin Muhammad bin Hanbal Ash-Shaibani, Ibid., p580

<sup>245</sup> Imam Abu Hanifah's full name is :- al-Nu'man bin Thabit Abu Hanifah, in Khadduri, Majid, *The Islamic Laws of Nations; Shaybani's Siyer*, 1966, The Johns Hopkins Press, Baltimore, USA, p302

<sup>246</sup> Safwat, Safia F., 'Offences and Penalties in Islamic Law,' in *The Islamic Quarterly*, The Islamic Cultural Centre, London, Vol. 26, No. 3, 1982, p168 also see Tahir-ul-Qadri, Muhammad, *Islamic Penal System and Philosophy*, Minhaj-ul-Qur'an Publications, Lahore, 1995, p389

<sup>247</sup> Ayoub, Mahmoud, 1994 'Religious Freedom and the Law of Apostasy in Islam' in *Islamochristiana*, 20, p87.

The subject will be found discussed adequately by al-Samara'i in *Ahkam Murtadd*, wherein the relevant authorities are cited. Reference in this connection may also be made to *al-Mughni* by Ibn Qudamah, *Muqaddamah* by Ibn Rushd, *Fath al-Bari*, *'Umdat al-Qari*, *Fath al-Qadir*, *Hidayah*, and *'Inayah*, wherein instances of the Prophet forbidding the killing of women for their lack of fighting capacity, are mentioned and the view is upheld that the slaying of a person is grounded on *hirab* (fighting or active enemy) and not merely on change of faith.<sup>248</sup>

Safia F. Safwat presents the general view that :

The jurists agree that the apostate man or woman should be put to death. The Hanafites are inclined to think that the punishment of death on account of apostasy is applicable to men alone. According to them, women are only to be kept in prison until they repent, because the Prophet has forbidden the putting to death of the unbelieving women. Those who differ with this view assert that this has reference only to the killing the unbelieving women in war and not to apostate women. The Shi'ah Imamiyyah hold the same opinion.<sup>249</sup>

This is also stated in the *Encyclopaedia of the Qur'an*, by Wael Hallaq's appraisal of 'Apostasy.' He mentions that:

The female apostate receives the same punishment [as men] according to all the schools except the Hanafis and Twelver Shi'is (Ja'faris), who waive this punishment and replace it by imprisonment.<sup>250</sup>

Safwat makes another interesting point while referring to the Shi'ah position on this :

The Shi'ah Imamiyyah maintain that whoever turns away from Islam after being born as a Muslim should be killed and no repentance should be accepted in his case. A woman should not be put to death for apostasy, even if she was born a Muslim. But she should be put in prison and flogged at the times of prayers.<sup>251</sup>

<sup>248</sup> Rahman, S.A., *Punishment of Apostasy in Islam*, op.cit., p45

<sup>249</sup> Safwat, Safia F., 'Offences and Penalties in Islamic Law,' in *The Islamic Quarterly*, op.cit., p168. Safwat also cites : Hilli, Najm al-Din Ja'far b. Hassan, (called al-Muhaqqiq), *Sharai' al-Islam*, Beirut, no date given, Vol.4, p18 (Safwat in footnote 82 on p180)

<sup>250</sup> Hallaq, Wael, 'Apostasy' in *Encyclopaedia of the Qur'an*, op.cit., p122

<sup>251</sup> Safwat, Safia F., *Ibid.*, p169. Safwat also mentions that Shi'ah Imamiyyah categorise *rida* as punishable within *ta'zir* and do not categorise it within their classification of *hudud*. *Ibid.* p180 in footnote 83. Also see O'Sullivan, Declan, '*Al-Hudud* : الحدود : Definition of Crimes and Punishments stated within the Qur'an and Sunna - Focusing on 'Apostasy'', op.cit., p67-68.



However, “the person who was not born a Muslim but became a Muslim and then committed apostasy after that should be put to death before making an effort to convince him to return from his error.”<sup>252</sup>

Haroon states that the punishment for apostasy is a *hadd* (crimes and punishments stated within the Qur'an). He defines apostasy as an offence by a Muslim who gives up and renounces Islam. “The punishment is beheading for men, but only imprisonment for women. This is one of the many privileged treatments Islam gives to women.”<sup>253</sup> Tahir-ul-Qadri supports the opposition on this view. He quotes a *hadith* from Sunan Abu Da'ud, which he believes is of a very authentic and reliable chain. ‘Abdullah ibn-i-‘Abbas narrated that the concubine of a blind man constantly verbally abused the Prophet. The blind man often asked her to stop such insulting remarks but she maintained her abusive comments, despite the efforts to prevent this from the blind man. He eventually killed her one night, due to these repetitive vituperative comments and the murder was considered legally legitimate as the victim voluntarily committed *sabb al-rasul*. When the Prophet heard about the killing of the woman, he is reported to have announced “Be witness to it that this murder is not punishable or avengable.”<sup>254</sup> The *hadith* from Sunan Abu Da'ud reads as :

A blind man had a slave-mother who used to abuse the Prophet (peace\_be\_upon\_him) and disparage him. He forbade her but she did not stop. He rebuked her but she did not give up her habit. One night she began to slander the Prophet (peace\_be\_upon\_him) and abuse him. So he took a dagger, placed it on her belly, pressed it, and killed her. A child who came between her legs was smeared with the blood that was there. When the morning came, the Prophet (peace\_be\_upon\_him) was informed about it. He assembled the people and said: I adjure by Allah the man who has done this action and I adjure him by my right to him that he should stand up. Jumping over the necks of the people and trembling the man stood up. He sat before the Prophet (peace\_be\_upon\_him) and said: Apostle of Allah! I am her master; she used to abuse you and disparage you. I forbade her, but she did not stop, and I rebuked her, but she did not abandon her habit. I have two sons like pearls from her, and she was my companion. Last night she began to abuse and disparage you. So I took a

<sup>252</sup> Safwat, Safia F., Ibid., p169

<sup>253</sup> Haroon, Muhammad, *Islam and Punishment*, op.cit, p31

<sup>254</sup> Tahir-ul-Qadri, Muhammad, *Islamic Penal System and Philosophy*, op. cit., p387,

dagger, put it on her belly and pressed it till I killed her. Thereupon the Prophet (peace\_be\_upon\_him) said: Oh be witness, no retaliation is payable for her blood.<sup>255</sup>

Tahir-ul-Qadri claims that this declaration from the Prophet certified the decapitation of an apostate woman, and that “since an *apostate* in Islam is liable to *death punishment*, therefore her master’s act of murder was declared right and lawful.”<sup>256</sup> [italics from original text.] He declares that the concept of apostasy is clearly mentioned in the Qur’an, in the verse 2:217, where it specifies that any man who commits an act of verbal, actual or theological deviation from or negation of any of the basic tenets of Islam is deemed to be an unbeliever. This Qur’anic verse is widely quoted in the material covering the topic of *irtidad* and *ridda*. Tahir-ul-Qadri comments on the defense by the initial three *madhhab*, as he argues that they base their decision on the overtly unequivocal *hadith* reported by ‘Abdullah ibn-i-‘Abbas :

تقتل المرأة المرتدة

A female apostate should also be sentenced to death.<sup>257</sup>

Tahir-ul-Qadri also cites another *hadith* that is more explanatory :

ان ابابكر رضى الله عنه قتل امرأة مرتدة في خلد فتنة

Hazrat Abu Bakr decapitated a woman who had turned apostate during his Caliphate.<sup>258</sup>

However, also in the case of apostasy by a woman, such an opposite ruling is expressed that women may *not* be punished by death. This is based on the understanding that :

the Holy Prophet forbade the killing of women and because originally rewards (for belief or unbelief) are deferred to the latter abode and their hastening (in this

<sup>255</sup> Abu Dawud, hadith number 4348, narrator Abdullah Ibn Abbas from e:\islamica\winhadis\winhadis.tex on CD Rom *islamica : Digital Library of Islamic Software*, Islamic Computing Centre, London, [ www.ummah.org/icc ]. Abu Da’ud, Sulaiman bin Al-Ash’ath bin Ishaq Al-Azdi As-Sijistani, *Sunan Abu Da’ud*, 4 Volumes, edited by Muhammad Muhyi al-Din ‘Abd al-Hamid, Matba’at Mustafa Muhammad, Cairo, no date given. Also see O’Sullivan, Declan, ‘*Al-Hudud : الحدود* : Definition of Crimes and Punishments, op.cit, p68-69.

<sup>256</sup> Tahir-ul-Qadri, Muhammad, *Islamic Penal System and Philosophy*, op. cit., p387

<sup>257</sup> Tahir-ul-Qadri, Ibid., p389. Tahir-ul-Qadri also cites *Subul-us-Salam*, Vol. IV, p265

<sup>258</sup> Tahir-ul-Qadri, Ibid., p389. Tahir-ul-Qadri also cites *Subul-us-Salam*, ibid., Vol. IV, p265



life) brings disorder and a departure from this (principle) is allowed only on account of an immediate mischief and that is *hirab* (war) and this cannot be expected from women on account of the unfitness of their constitution.<sup>259</sup>

### **1.6 Inconsistency in the time to repent (*istitabah*)**

The whole concept of a convicted apostate's 'repentance' for their sin and a return to the Islamic community, to avoid the death penalty, is another issue which needs addressing. This is due to the fact that, as can be seen above, with the sentencing for women convicted of apostasy, the allowance of a set time-period for a convicted apostate's *istitabah* (repentance), is also found to have no definitive evidence that is stated within the Qur'an. There is also a broad range of suggestion within the four *maddhab* of whether the time-scale should be three days, a month, or none at all, while other Islamic jurists and theologians argue that it should be a life-long endeavour to encourage the sinner to realise that they had lost their faith, and they are enable reconsider their position, to re-discover their own desire to return to Islam, before a natural death thus, this is not a decision undertaken by the court's discretion.<sup>260</sup>

Mohammad Hashim Kamali makes it apparent that differences of opinion are presented by the four schools of law concerning whether the perpetrator of blasphemy should be requested to repent and also whether such repentance, if offered, would be acceptable and admissible within the rules of law. In the context of blasphemy, it is essential for the perpetrator to have their repentance accepted, as this would result in the unconditional acquittal of the case. He points out that there is disagreements

<sup>259</sup> 'Ali, Maulana Mohammad, no date given, *The Religion of Islam : A Comparative Discussion of the Sources, Principles and Practices of Islam*, S.Chand and Co., New Delhi, India, p592, p593, p598-599, [Cairo edition is dated as 1967 in El-Awa, op. cit., p143] also see 'Ali Ibn Abi Bakr, Burhan al-Din, Al-Marghinani, *The Hidayah, Or Guide; A Commentary on the Mussulman Laws, Translated by Order of the Governor-General and Council of Bengal by Charles Hamilton*, Four Volumes, 1791, T.

Bensley, London, Vol. I, p577. Also see O'Sullivan, Declan, '*Al-Hudud : الحدود* : Definition of Crimes and Punishments stated within the Qur'an and Sunna', op.cit, p68-69.

<sup>260</sup> An-Na'im, Abdullahi Ahmed, 1986, 'The Islamic Law of Apostasy and it's Modern Applicability : A Case From The Sudan' in *Religion*, Vol. 16, p211. Also see Khadduri, Majid, *War and Peace in the Law of Islam*, op.cit., p151, and also O'Sullivan, Declan, 'The Death Sentence for Mahmoud Muhammad Taha : Misuse of the Sudanese Legal System and Islamic *Shari'a* ?', *The International Journal of Human Rights*, Frank Cass Publishers, Vol., 5, No.3, Autumn 2001, p45-70

among jurists, and significantly, amongst jurists of the same school of law. This offers some doubt when trying to determine the legal position on this issue.<sup>261</sup>

The Hanafi school argue that it is recommended to request the blasphemer to repent (*istitabah*) and return to the faith of Islam, while Imam Malik finds the repentance unnecessary. The Shafi'is and Hanbalis have differing views, one corresponding with the Hanafi's and the other with Imam Malik's view. The majority overview opinion is that *istitabah* is a necessary requirement to be received before any punishment is delivered. There is a period of three days<sup>262</sup> that are allowed for the accused to consider their position and offer a repentance within this time-scale. As stated by Wael Hallaq, in the *Encyclopaedia of the Qur'an* :

The apostate who is compos mentis (*mukallaf*), is given three days grace period to reconsider his decision. If he repents, there are to be no legal consequences. If he does not, then he is by juristic consensus (*ijma'*) to be executed by the sword.<sup>263</sup>

However, this 'consensus' is not complete, as the Malikis do not consider time for any repentance to occur, and base this opinion on the *hadith*: *من بدل دينه فاقتلوه* 'Kill those whoever changes his religion,' as it is silent on repentance. Some Shafi'is and Hanbalis accept this view.

The support for the acceptance of repentance is based on a tale from A'isha (one of the Prophet's wives) which describes how a woman renounced Islam on the day of the battle in Uhud and the Prophet Mohammad ordered that she should be requested to repent on her own will.<sup>264</sup>

<sup>261</sup> Kamali, Mohammad Hashim, op.cit., p233. Also see O'Sullivan, Declan, 'The Death Sentence for Mahmoud Muhammad Taha,' op.cit., p45-70

<sup>262</sup> Kamali, Mohammad Hashim, Ibid., p233. Also see Safwat, Safia F., 'Offences and Penalties in Islamic Law,' op.cit., p168.

<sup>263</sup> Hallaq, Wael, 'Apostasy' in *Encyclopaedia of the Qur'an*, op.cit., p122

<sup>264</sup> Kamali, Mohammad Hashim, Ibid., p233 Kamali also cites Al-Shawkani, Yahya b. Ali, *Nayl al-Awtar : Sharh Muntaha'l-Akhbar*, no date given, Mustafa al-Babi al-Halabi, Cairo, VII, p221, and also cites Ibn Qudamah, Muwaffaq al-Din Ibn Qudamah al-Maqdisi, *al-Mughni*, 1267AH, Dar al-Manar, Cairo, third edition, X, p74 and also cites from Al-Yahsabi, al-Qadi Abu'l-Fadl 'Iyad, *al-shifa' bi-Ta'rif Huquq al-Mustafa*, (annotated by Ahmad al-Shamani), no date given, Dar al-Fikr li'l-Tiba'ah wa'l-Nashr, II, p254



In his work covering the concept of apostasy, Yahya b. Ali Al-Shawkani intertwines both views, by maintaining that it is valid to ask an apostate to repent if the accused has acted from the stance of ignorance, but it is not a valid option if they also claim to have knowledge and righteousness.<sup>265</sup>

When the accused has insulted God and/or the Prophet Muhammad, then repentance, whether requested for, or not, is admissible by the majority of all jurists. The need for the repentance and its importance has differing approaches from the schools of law. The predominant view of both the Hanbalis and Malikis is that repentance will not pardon the blasphemer from punishment in this world, although it would help them, if they are sincere, in being more beneficial for them in the hereafter.<sup>266</sup> In this condition, the Hanbalis and Malikis do not draw any distinction between insulting either God or the Prophet Muhammad. Either act is considered the same offence, thus to be treated on an equal level. The position is based on the cases dealt with by the Caliph 'Umar b. al-Khattab who gave equal punishments on *Sabb al-Allah* and *Sabb al-Rasul*. In both cases he never requested for repentance from the blasphemers.

Thus : it is said that the main difference between blasphemy and apostasy is that the latter is open to repentance but the former is specifically not.<sup>267</sup>

However, contrary to this, there is another view held by the Hanbalis and Maliki schools of law that states it as obligatory for a convicted blasphemer to be given every opportunity to repent and return to Islam.<sup>268</sup>

A further difference of opinion is presented in the other two schools of law, as Hanafis and Shafi'is hold blasphemy within the same category as that of apostasy.

<sup>265</sup> Kamali, Mohammad Hashim, Ibid., p233 Kamali also cites Al-Shawkani, *Nayl al-Awtar*, Ibid., VII, p221,

<sup>266</sup> Kamali, Mohammad Hashim, Ibid., p234 Kamali also cites Muhammad 'Ali b. Ahmad b. Sa'id al-Zahiri Ibn Hazm, *al-Muhalla*, no date given, Maktabat al-Salam al-'Alamiyyah, Cairo, XI, p411 and also cites Al-Buhuti, Mansur b. Yunus b. Idris, *Kashshaf al-Qinna' 'an Matn al-Iqna'*, 1968, Maktabat al-Nasr al-Hadithah, Riyadh, VI, p168

<sup>267</sup> Kamali, Mohammad Hashim, Ibid., p234 Kamali also cites Ibn Taymiyya, Taqi al-Din, 1398/1978, *al-Sarim al-Maslul 'ala Shatim al-Rasul*, edited by Mohammad Muhyi'l-Din 'Abd al-Hamid, Beirut, Dar al-kitab, p302

<sup>268</sup> al-Samara'i, Nu'man 'Abd al-Razzaq, 1968, *Akham al-murtadd fi al-shariat al-Islamiyyah*, Dar al-'Arabiyyah li'l Taba'at wa'l-Nashr wa'l-Tauzi, Beirut, Lebanon, p104, also see Kamali, Mohammad Hashim, Ibid., p234 Kamali also cites Al-Jaziri 'Abd al-Rahman, *Kitab al-Fiqh 'ala'l-Madhahib al-Arba'ah*, 1392AH, Dar al-Fikr li'l-Tiba'ah wa'l-Nashr, Beirut, V, p425. Also see O'Sullivan, Declan, 'The Death Sentence for Mahmoud Muhammad Taha,' op.cit., p45-70

They hold that repentance from both the blasphemer and the apostate is acceptable as legally admissible. The blasphemer is to be allowed three days, as is the apostate, to contemplate, and consider whether to repent. The three days begin on the day of conviction. During the three days the convicted is entitled to food, clothing and anything else felt necessary. Repentance, in the case of a Muslim who has become an apostate, consists of their return to Islam, by reciting the testimonial of faith (*kalimat al-shahadah*).

It is of interest to note here how a *zindiq* was treated, historically, with repentance. Some jurists, particularly the Hanafis in Iraq, often treated a heretic (*zindiq*) even more sternly than an apostate. Although the punishment of the death penalty was attached to both crimes, the apostate had the chance to repent and be freed. Both the Hanafis and Imam Malik held that repentance from a *zindiq* was not valid and there was no other route for the convicted to avoid the compulsory death penalty. However, contrary to this position,

On the other hand, the majority, including the Shafi'is, have held that the heretic was to be treated like the apostate and should likewise be given the opportunity to repent.<sup>269</sup>

Here is obviously another area where the open inconsistency of the Sunni schools of *Shari'ah* becomes apparent.

Concerning the case of a non-Muslim, or a *dhimma*, if a blasphemer, their repentance should be an expression of remorse, offering a guarantee that the act will not be repeated. The head of state may accept the repentance and the accused could then either retain their existing religion, or, as Taqi al-Din Ibn Taymiyya, suggests, they could genuinely embrace Islam.<sup>270</sup> According to another view, which seems to be more preferable, the terms of repentance should be more conditional in relation to the

<sup>269</sup> Kamali, Mohammad Hashim, *Ibid.*, p222. Also see al-Samara'i, Nu'man 'Abd al-Razzaq, 1968, *Akham al-murtadd fi al-shariat al-Islamiyyah*, Dar al-'Arabiyyah li'l Taba'at wa'l-Nashr wa'l-Tauzi, Beirut, Lebanon, p206. And also Al-Jaziri 'Abd al-Rahman, *Kitab al-Fiqh 'ala'l-Madhahib al-Arba'ah*, 1392AH, Dar al-Fikr li'l-Tiba'ah wa'l-Nashr, Beirut, V, p428 and also cites Al-Bahnasawi, Salim, *Al-Hukm*, Op. Cit., p373

<sup>270</sup> Kamali, Mohammad Hashim, *Ibid.*, p234, Kamali also cites Ibn Taymiyya, *al-Sarim al-Maslul*, *Ibid.*, p302



nature and content of the offence and the convicted should unequivocally condemn what was done and/or said in the incident.

Concerning a Muslim apostate, Hanafis and Shafi'is accept the repentance and the return to Islam for a maximum of only four states of apostasy. If the apostate repents, then commits apostasy on a fifth occasion, and returns to Islam, the fifth return to the faith will carry no weight. On the first four times the repentance is allowed on the three day consideration time, in order for the sinner to reach *istitabah*. This procedure is based on a report on the Prophet Muhammad having asked a Nabhan 'for repentance four or five times.' This is reported by Qadi 'Iyad al-Yahsabi (d.544AH/1149AD), who states that Ibn Wahab reported from Imam Malik that on each occasion that the apostate committed the offence, he should be asked to repent permanently. This is also the same ruling by Imams Shafi'i and Ibn Hanbal.<sup>271</sup> Another report holds that a differing time-scale for repentance is held. It states that 'Ali b. Abi Talib held the view that an apostate should be called to repentance over a period of two months. Further more, both Ibrahim al-Nakha'i, who taught Imam Abu Hanifah, and Sufyan al-Thawri hold the view that the door of repentance should remain open indefinitely, until the apostate will have the length of their life to be allowed to re-embrace Islam.<sup>272</sup>

### **1.7 Conclusion.**

As can be seen from the above assessment of the opinions presented by Islamic jurists, theologians and scholars, the crimes and acts have been defined which are to be included as genuine *al-hudud*, and which are stated as both the crime - and the relevant punishments for them - within the Qur'an. It is obvious that the opinions presented differ in determining whether these crimes number four, six or seven acts to be the official *al-hudud*.

Although the manner in which they have been categorised by some jurists, could link two related crimes into being one, i.e. adultery (*zina*) --- ( الزنا ) being linked in with

<sup>271</sup> Kamali, Mohammad Hashim, Ibid., p234, See also Al-Yahsabi, al-Qadi Abu'l-Fadl 'Iyad, *al-shifa' bi-Ta'rif Huquq al-Mustafa*, Ibid., II p260

<sup>272</sup> Kamali, Mohammad Hashim, Ibid., p235, See also Al-Yahsabi, al-Qadi Abu'l-Fadl 'Iyad, *al-shifa' bi-Ta'rif Huquq al-Mustafa*, Ibid., II p260, and also Ibn Qudamah, Muwaffaq al-Din Ibn Qudamah al-Maqdisi, *al-Mughni*, op. cit., VIII, p125, and also see Al-Shawkani, Yahya b. Ali, *Nayl al-Awtar*, op. cit., VII, p221. Also see O'Sullivan, Declan, 'The Death Sentence for Mahmoud Muhammad Taha,' op.cit., p45-70

the false accusation of adultery (*qadhaf*) --- (القذف); or perhaps even highway robbery (*qat'-e-tariq*) --- (قطع الطريق) being linked in with theft (*sarqah*) --- (السرقة) which will reduce the numbers down from six to four, the most important point to be aware of is that the seventh crime, that of 'sedition' (*baghi* --- البغي), is often not cited in most definitions. Of even more relevance to the topic of this research, is that the acts of drinking alcohol (wine) *shurb* : الشرب – or *khamr* or *shurb al-khamr*, and that of apostasy (*ridda* – ردة or *irtidad* – ارتداد), are either both included in a given list of definition, or are both excluded – or one of the two are included, while excluding the other. It is rather strange to witness some lists accepting apostasy but rejecting drinking wine. However, some very positive news at least, is that some lists of *al-hudud*, include the use of alcohol, which intoxicates a person, but excludes the act of apostasy, as the latter is an act undertaken as a sober, personal decision, in which a person decides which path they intend to follow – or refuse to follow - to make their personal connection with Faith in God.

It is relevant to consider that although the crime of *al-sabb* – السب is raised in the Qur'an, it is punished via *ta'zir*. Therefore, as *al-sabb* covers all forms of blasphemy, and the sin of 'passive apostasy' is often held to be equal with *al-sabb*, then the more logical – and tolerant – manner in punishing and preventing such a person's disrespect to God, the Qur'an and the Prophet Muhammad should also be dealt with through *ta'zir* and not *hudud*.

The final analysis is to conclude that there is very little, if any, consistency in the understanding and interpretation of the crimes of *al-hudud* found within the Qur'anic text. This offers another realisation that such a mixture of alternative *tafsir* (interpretations) of the sacred scripture will lead to differing perspectives and then, this leads to differing legal opinions on these crimes. Finally, this factor adds to the potential confusion and ambiguity of defining the crimes and establishing the legal sentencing for them. As with the case of apostasy, there is ambiguity between jurists who present the death penalty as the legitimate legal sentence for the act, and other jurists who oppose this view. This thesis aims to prove that it would, potentially, be wiser to incorporate the act of apostasy into the category of crimes where the judge's



decision through *ta'zir* punishment, offers the final sentence. This would then enable each individual circumstances and situations which led to the apostate (*murtadd*) to leave Islam to be addressed, and to allow the judge to have some discretion in deciding the fate of the convicted. This view opposes the death sentence for every person who could well have made a very personal, internal decision to change their faith in God, or change the path they wished to practice their faith on, which does not involve any other person, or the act of any other crime against the Islamic community. It is quite simply an individual, personal 'life-change' decision.

An important point to be aware of, as already stated, is that *ta'zir* is defined as being the punishment for any transgression against God or a person, if there is no set *hadd* punishment or *kaffarah*, for the specific act that was committed. This means that the authority to clarify what is classified as a 'transgression' and what will *not* be classified as such, is reserved to God alone. As Muslims hold *Shari'a* as the final statement of God's rules and authority over humans, no human being has the authority or power to accuse another as being a 'unbeliever,' due to *takfir al-Muslim*.<sup>273</sup> This would also lead to the fact that no human being has the right to kill another person purely because of a person's private change of their religious belief.

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<sup>273</sup> For a full discussion on *takfir al-Muslim* see Chapter Five.

## CHAPTER TWO

### 2.0 THE VOCABULARY OF HERESY AND UNBELIEF.

#### 2.1 Introduction.

The main aim of this research was to determine whether a person who is convicted of leaving Islam as an apostate, or of making blasphemous comments while still a Muslim, has simply committed a minor offence, which does not fall within the boundaries of the more serious crime of treason. It is possible to assess the definitions of the different forms of unbelief, and the definition of treason, as this indicates very separate definitions and separate punishments. As apostasy is a theological sin against God and treason is a political seditious act of rebellion against the state, it will be possible to assess whether the word used for one of these acts have been mistakenly connected to the other. Certain historical circumstances seem to have complicated a clear understanding of the two terms as being separate acts, and this confusion and ambiguity seems to have become accepted without any further analysis.

This area of *Shari'ah* law is in need of assessment, to establish whether or not it has become far easier to blame the accused with the larger, more generalised but related crime, that carries a far heavier punishment, and whether such convictions have any legal validity. Assessing such court cases in detail may present enough information to suggest that the legal sentences applied to the actual acts that have been committed should be reviewed. A *Shari'ah qadi* (judge) could, quite possibly, filter the cases down into more specific categories of crime, each with its own localised penalty. This research aims to show whether, in some historical cases, minor offences by the accused, such as a person's slight inclination to question their own faith in God, were actually cast under the much larger umbrella of 'apostasy,' so the person was convicted of having 'total unbelief.' The research also aims to prove whether treason, a more severe act, would lead the person convicted for 'unbelief' to be not simply ostracised from the faithful community, but to receive the death penalty for a crime against the state which they did not commit, as opposed to a crime against God that an apostate would have committed. This can indicate that it is possible for a Muslim to be convicted for a crime which, in legal, ethical, moral and theological terms, they had not committed, based on a ruling that was established on historical circumstances where traitors and quislings also changed their faith during their rebellious treason,



but were sentenced to death for treason and not for apostasy. It can be argued that the misunderstanding of the reasons why the convicted were sentenced to death might have caused the confusion of the misguided interpretation of what apostasy represents.

This Chapter aims to establish a firm background in the knowledge of why the words which generally refer to the sin of ‘unbelief’ were used historically, and explains how their meanings have changed through time. The change that has occurred in the use of the words has increased the blurred boundaries between different crimes, as they tend to lose any definite separation from each other.

The Chapter also aims to determine whether the accusation of ‘apostasy’ (*irtidad* or *ridda*) is used for very specific, well defined acts, or whether these terms *irtidad* and *ridda* appear to be used as a ‘broad blanket’ which includes other acts that are to be found outside the actual definition of *irtidad* and *ridda*. Establishing this, will lead on to discover whether it is easier for the accusers, either intentionally or unintentionally, to misuse the *Shari’ah* legal system to blame the sinner with one main ‘label,’ which represents a far greater crime, as compared to the sin they actually committed. Once the correct categorisation of the smaller forms of unbelief, with their separate punishments, are defined, it will be possible to assess whether there is still any genuine confusion or ambiguity in the identification of these crimes, and the way *Shari’ah* is used to punish them.

After further complexities which concern the issue of ‘unbelief’ are assessed, the concept of treason is then analysed. This Chapter concerns trying to precisely identify the separate acts of unbelief that can be committed. The information provided in this Chapter demonstrates the links between words, which often appear to be unrelated. This will help to explain how such words intertwine with each other in the accusations and convictions of a person as an apostate or in issues related to apostasy and blasphemy. The main aim is to confirm that words relating to many different levels of minor acts and major sins are not separated or isolated, but are connected terms, having strong inherent links. This can cause enough confusion, and lead to the accusation of ‘apostasy’, when the accuser believes that the word used is correct in labelling a person to be an ‘apostate’ or a ‘blasphemer.’ However, when assessed in

further detail, it can be possible to confirm that the accused were, in fact, neither. This situation, with ambiguous definitions of the different forms of unbelief, can inevitably lead for a faithful believer of Islam to be mistakenly accused and convicted of having left Islam or having offended God. Once convicted with a named act which holds a misguided understanding of what it includes, can lead to the punishment of a far harsh a penalty that would not have been legally warranted, if there had been less confusion with a more precise definition of the named form of ‘unbelief’ they were convicted for.

The notion of ‘unbelief’ in Islam has to be initially analysed by assessing the terminology used in reference to the crimes of blasphemy, apostasy and heresy against God, the Prophet Muhammad and the religion of Islam. This is in order to understand the significance of the offensive acts and to determine whether there is any consistency in the established legal system of *Shari’ah* (Islamic law) in the sentencing of appropriate punishments and reprimands for those who are found guilty of such acts.

A general list of the most relevant and appropriate terminology used in the area of ‘apostasy in Islam’ was gathered succinctly by Thomas Hughes, in the *Dictionary of Islam*, published in 1895. All the terms are listed under the general title of ‘Infidel’. These definitions clarify, to some extent, the differing category sub-groups and the contextual changes of certain acts, in different circumstances. The list presents the terms which are used in accusations against various forms of ‘unbelievers’, and therefore, the reasons why such different terms exist. As Hughes explained:



### Infidel.

There are several words used in relation to individuals and groups who are involved in different forms of infidelity:

- i) *kafir* ----- One who *hides* or *denies* the truth
- ii) *mushrik* ----- One who gives *companions* to God
- iii) *mulhid* ----- One who has *deviated* from the truth
- iv) *zindiq* ----- An infidel or a zand-worshipper
- v) *munafiq* ----- One who secretly disbelieves in the mission  
of Muhammed
- vi) *murtadd* --- An apostate from Islam
- vii) *dahri* ----- An atheist
- viii) *wasaniy* ---- A pagan or idolater.<sup>274</sup>

As a useful background to the origin and use of the relevant words discussed in this thesis, it is interesting to note one point that can highlight certain elements of confusion that exist in the use of these words. The definition of some words makes the crimes they represent as similar acts, but as they are separate acts, they need separate definitions. However, it becomes apparent that because the separate crimes are similar, it is rather easy to label one act with the wrong word. Any conviction for a crime the person did not actually commit, leads to the wrong sentence being delivered.

The ease in using the word of 'unbelief' in a general, instead of specific, form is shown to have somewhat blurred the edges of each category, between one crime and another. For example, for the specific concept of 'heresy' some scholars argue that "in medieval Western Christendom heresy was determined by a supreme ecclesiastical authority the like of which Islam lacked" and "have questioned the very existence of heresy, in the strict technical sense, in Islam."<sup>275</sup> This theory is supported by such arguments which observe that:

<sup>274</sup> Thomas P. Hughes, *Dictionary of Islam*, 1895, W. H. Allen & Co., London, p259

<sup>275</sup> Henderson, John, B., *The Construction of Orthodoxy and Heresy : Neo-Confucian, Islamic, Jewish and Early Christian Patterns*, State University of New York Press, Albany, USA, 1998, p20.

It is curious, even astonishing, that among the very few loan-words of European or Christian origins used in modern literary Arabic are the words *hartaqa* – ‘heresy,’ and *hurtiqi* (or *hartiqi*) ‘heretic’.<sup>276</sup>

Bernard Lewis suggests that the words *hartaqa* and *hurtiqi* first appeared within Christian Arabic literature, from Syria, in the medieval period. They became current in Arabic use in the nineteenth century, mainly within translations of both Western Christian and non-religious books. Lewis suggests that in the present day, the words are used by Western-educated Muslim historians dealing with the historic use of the words, as opposed to the traditional theological approach which would deal with the same area of research, but with Arabic terms alone. Lewis then concludes

Can it be that Islam, with its seventy-two and more named heresies, had no name for “heresy” and is thus in the position of the Red Indian tribe which, we are told, has a score of verbs for different ways of cutting, but no verb “to cut”? Or, is the notion of heresy in the Christian sense so alien to Islam that a loan-word was needed to describe it?<sup>277</sup>

It should be noted here, that within Judaism there was also ambiguity when using such terms. Medieval rabbis, when referring to heresy or heretics, used three terms *min*, (from *minim*), *‘apiqoros* and *kofer* interchangeably, although “Maimonides attempted a precise and separate definition of each.”<sup>278</sup> However, it was still clear that

there was no general agreement on how they were related to one another, or even on their basic meanings. Indeed, several rabbinic authorities devised imaginative or ingenious etymologies for some of these terms. For example, Abraham Bibago (d.c.1489) derived *min* from the name of the Persian prophet, Mani, the alleged founder of Manicheanism.<sup>279</sup>

Henderson presents an opposing argument which suggests the contrary. Any difficulty that is thought to exist can be nullified if scholars concentrated on the understanding within Christianity during the late antiquity, of what was perceived to be the concepts of ‘orthodoxy’ and ‘heresy.’

<sup>276</sup> Henderson, *ibid.*, p20. See also Lewis, ‘Some Observations on the Significance of Heresy in the History of Islam’ *Studia Islamica*, 1, 1953, p51-52 and also see Bernard Lewis, *Islam in History : Ideas, People and Events in the Middle East*, 1993, Open Court, Chicago, p283.

<sup>277</sup> *Ibid.*, p283

<sup>278</sup> Henderson, *ibid.*, p21. Also see Gries, Ze’ev, ‘Heresy,’ in *Contemporary Jewish Religious Thought : Original Essays on Critical Concepts, Movements, and Beliefs*, edited by Arthur A. Cohen and Paul Mendes-Flohr, Charles Scribner’s Sons, New York, 1987, p341

<sup>279</sup> Henderson, *ibid.*, p21. Also see Lazaroff, Allan, *The Theology of Abraham Bibago : A Defense of the Divine Will, Knowledge, and Providence in the Fifteenth-Century Spanish Jewish Philosophy*, University of Alabama Press, USA, 1981, p19 and p81



In any case tying basic cultural (and cross-cultural) concepts such as orthodoxy and heresy too closely to the circumstances of their manifestations in any one culture makes doing comparative intellectual history very difficult, if not impossible. At its worst, this procedure is a variation of the old cultural imperialist ploy, which first asserts that traditional non-Western cultures lack science, or philosophy, or reason, and then defines those terms in such a narrow, particularistic way that the assertion is 'proven.'<sup>280</sup>

A brief overview of the very word to define heresy will help explain this point. The term *hairesis*, took on a noticeably pejorative meaning in Judaism during the same period of time that it had also done so in Christianity. These co-events seemed to have occurred "as an emerging rabbinic Judaism began to establish a form of orthodoxy following the great political catastrophe of A.D. 70."<sup>281</sup> However, this being said, the main word more commonly used to identify 'heresy' within Judaism was not so much *hairesis*, but *minim*. *Minim* was seen as a general term for heresy, and was "applied at various times in the rabbinic period to different groups which presented doctrinal challenges to rabbinic Judaism while remaining from an *halakic* (or legalistic) point of view within the fold."<sup>282</sup>

Although there are many references to the *minim* within the Talmud, it is still difficult for the reader to determine which specific group, or groups, is being referred to as heretics. The various groups potentially involved include the Samaritans, Sadducees, Gnostics, Christians (whether Jewish or others), Philosophers and Epicureans, to name but a few. Such groups were targeted with the word *minim*, as its specific meaning refers to 'species' or 'kinds' of people who differ from the mainstream opinion or practice. This offers little or no help, in determining any particular group it is used against in any given specific case.<sup>283</sup> Henderson highlights the fact that this situation is not confined within Judaism alone, or within just Christianity and Judaism, because

....the same is true, of course, of most terms for heresy and heretic in other religious traditions as well. *Min* was not the only rabbinic term for types of heretics. Another was the word *apiqoros*, apparently derived from

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<sup>280</sup> Henderson, *ibid.*, p20

<sup>281</sup> Henderson, *ibid.*, p21. Also see Simon, Marcel, 'From Greek Haeresis To Christian Heresy' in *Early Christian Literature and the Classical Intellectual Tradition: In Honorem Robert M. Grant*, edited by William R. Schoedel and Robert L. Wilkin, Éditions Beauchesne, Paris, 1979, p106

<sup>282</sup> Henderson, *ibid.*, p21

<sup>283</sup> *ibid.*, p21

the Epicureans ‘whose skeptical [*sic*] naturalism denied divine providence.’ But *apiqoros* was later also applied to those Jewish groups that denigrated rabbinic and Talmud authority, such as the Sadducees, on the suggestion that anyone who denied divine providence and retribution would feel free to flout divine law.<sup>284</sup>

Another cross-reference with the monotheistic religions of Islam and Judaism, is that both are based on the similar Semitic languages, Arabic and Hebrew. Although both use the word *kofer* (Hebrew) and *kafir* (Arabic), the definitions of the words differ. In Judaism, the term *kofer* is often translated to mean ‘free thinkers,’ this definition, compares very closely to the Arabic word *zindiq* in Islam.<sup>285</sup>

*Kofer* sometimes translated as ‘freethinker’ was also used in rabbinic literature to denote heretics, particularly those who deny an essential or *ikkar* ‘dogma,’ like the *Kafir* of Islam.<sup>286</sup>

The terms *kofer* and *kafir* are mentioned here to present the initial points of reference for the similarities of the terms’ meanings, when used in the theological debate of ‘belief and unbelief’ in Faith in God, within the different religions. Another point that becomes apparent is that virtually the same definitions are given for very different words (i.e. *kofer* in Hebrew = *zindiq* in Arabic). Although in this case the different words are from different languages, and from different religions, it does relate to the assessment of how much ambiguity can arise from such similarities that this research aims to prove actually does occur in Islam.

This research will aim to show that in some court cases in the Islamic community, a person was accused of *zindiq* but was convicted of being an apostate. This presents the blurring between different crimes, and the lack of definite borders between defining them. It also shows that the convicted may well receive the penalty for the one crime, but having committed another crime – which technically holds another set legal punishment.

After comparing the similar words used in Judaism and Islam, there is also a slight connection with the terms that are used in Christianity. Henderson explains that:

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<sup>284</sup> Henderson, *ibid.*, p21

<sup>285</sup> For further information on *zindiq* and *kafir* see below.

<sup>286</sup> Henderson, *ibid.*, p21



the Islamic terms that best express the condemnatory force of the Christian notion of heresy are probably *Kafir* and *Kufr*, 'unbeliever' and 'unbelief.' Not only are these words more "terrible and unequivocal" than the others, but they also seem to refer more directly to deviants in matters of doctrine and belief, as opposed to practice. In Muslim theological polemics, *kafir* is frequently used to designate one's opponent.<sup>287</sup>

Finally, in this brief survey it should be noted that in Islamic theology other terminology is also used by the Islamic heresiographers in classifying various sects that have moved away from mainstream Islam. These terms are more neutral, with a lesser polemic weight. The groups that split away are referred to as *firaq*, which is "a noun from the Arabic verbal stem *faraqa*, split, divide, differentiate."<sup>288</sup> The actual Arabic term for 'heresiography' itself, is *ilm al-firaq*. In reference to a small group who split away from a much larger group, "heresiographers use the word *ta'ifa* (sect), a term that appears more than a dozen times in the Qur'an."<sup>289</sup> Henderson points to the broad, ambiguous use of such words, in this area of Islam

Islamic heresiographers frequently used these words rather imprecisely. For example, they applied *firaq* to designate independent sects, schools of thought and even minor doctrinal positions.<sup>290</sup>

This Chapter discusses firstly how consistent the definitions of the different forms of impiety, irreverence and the transgression over recognised boundaries of Islam, or the complete renouncement of faith actually are. Secondly, how the legal schools of Islamic law deal with such a sensitive issue is addressed. The aim is to make apparent the confusion, or level of ambiguity, in the categorisation of certain acts that have been and still are labelled as either 'apostasy,' 'blasphemy' or 'heresy' when, in fact, these acts can be legally understood to be other illegal acts, that happen to include one or more of these three crimes, as either a peripheral or a central attachment to the main crime. Having established this, it is then possible to assess the penalties that exist for the acts of apostasy and blasphemy within the *Shari'ah* legal system. The law against these acts is set to prevent or encumber such offensive acts, categorised as

<sup>287</sup> Henderson, *ibid.*, p20. Also see Taylor, John, 'An Approach to the Emergence of Heterodoxy in Mediaeval Islam' in *Religious Studies*, 1967, Vol.2, p198

<sup>288</sup> Henderson, *ibid.*, p20. Also see Halm, Heinz, *Shiism*, translated by Janet Watson, Edinburgh University Press, Edinburgh, Scotland, 1991, p2

<sup>289</sup> Henderson, *ibid.*, p20. Also see Khuri, Fuad, I., *Imams and Emirs : State, Religion and Sects in Islam*, Saqi Books, London, 1990, p27

<sup>290</sup> Henderson, *ibid.*, p20.

being either 'anti-Islamic' or as a negative betrayal of the religion of Islam and the Prophet and as anything that is against God's Oneness (*tawhid*).<sup>291</sup>

It is necessary initially to present a historical overview of the terms defined in such crimes of transgression, and to clarify when they were used in both accusations and convictions of such acts that have been undertaken. Also, the fact of whether such terminology is still used in reference to the same, or similar, crimes in present times needs some attention. Although the terminology is still used now, it is of interest to discover if the definitions of the words have changed over time, and certainly, if the circumstances they were presented in have also changed.

The order in which the words have been placed for definition is determined by the significant weight these actual terms carry. The first term which must be assessed is *kufr*, a broad category which covers such a vast array of different events, acts and so many forms of unbelief, including hypocrisy, denial of the truth, refusal to acknowledge the existence of Allah, and also a person living in pretence of belief but actually suffering inner doubt. A fully detailed analysis of *kufr* and the reference made to it in the Qur'an would require separate research in this very specific area. Within the narrow boundaries of this research it is sufficient to list and define the acts and briefly survey the widest scale that *kufr* ranges across. This will help determine which acts can be legitimately proven to be unquestionably included within the acts of *irtidad* and *ridda*, and which are minor deeds of disrespect which require punishment or objection, but are not to be held within the qualification of 'apostasy' or 'blasphemy.'

The definition of the terms used will discuss the ways in which an individual pretends to be a devout Muslim, but in fact, secretly hides his or her disbelief. The term *kafir* is the label describing one who covers up the truth. It refers to people within the *kufr* categories. The term *shirk* refers to an individual who 'associates' something with Allah, thus not accepting the unity and completeness of God's Oneness and divinity.

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<sup>291</sup> "*tawhid* derives from the verbal noun *wahhada*, 'to make one,' 'to declare or acknowledge oneness.' The acknowledging of the Unity of Allah, the indivisible, Absolute and the sole Real. This doctrine is central to Islam and, indeed, is the basis of salvation, but is understood within Islam in two diametrically opposed ways, as it were, that of 'exclusively' and that of 'inclusively.' " *The Concise Encyclopaedia of Islam*, op. cit., p400



This term generally relates to polytheists (*mushrikun*), who worship idols of animate or inanimate objects, alongside their worship of God.

The term *bid'a* describes acts of 'novel innovation' on a religious basis, which could be perceived to be insulting to devout Muslims, who pray and worship in the same traditional manner that occurred in the life time of the Prophet Mohammed. However, there is also a positive interpretation of *bid'a*, in reference to certain, fully accepted innovations, which are also discussed. The next term *zindiq* refers either to a person who, while professing to be a devout Muslim, is actually an unbeliever, or to a person who does not belong to a religion of any kind, but portrays themselves as a Muslim. *Zindiq* has a clear link to acts within the category of *kufr*, but refers more specifically to those who are considered to be either 'free thinkers' or 'philosophers,' who publicly propagate the 'intellectual' arguments that they consider will defend their beliefs. A *zindiq* does not offer hostility or disinterest towards Islam, but more particularly, stimulates a debate based on intellectual and philosophical theosophy.

The next two terms to be assessed are also linked together. *Ilhad* refers to the 'deviation' from the path of Truth within Islam and thus, a *mulhid* is 'an infidel who has deviated', or deliberately turned away from this path. This then leads on to the very essence of the important terminology in the thesis, the Arabic words for 'apostasy,' *irtidad* and *ridda*, and the term that specifically means an 'apostate' in Arabic, *murtadd*.

In summary, the area of apostasy and apostates within Islam has a range of Arabic terms which have specific definitions, and need to be used in a very particular context. All of this terminology needs to be defined and understood before an adequate discussion can begin covering the main issues surrounding the conviction of apostasy or blasphemy and the legal sentences held for these crimes. Together with the relevant terminology used within the apostasy debate, it will also be necessary to mention the sources of relevant sentences, which include quotes from the Qur'an and *ahadith* (Traditions).

In an attempt to answer the questions raised above, it is now necessary to define the terms that *are* used in Arabic and which authentically define the concepts of



‘apostasy’, ‘apostates’, ‘blasphemy’ and the acts of infidels in Islam. There is an attempt to present the reasoning why these words were used in their socio-historical context. The first term to be discussed is *kufr*.

## 2.2 *Kufr* (كفر)

“That which covers the truth.”<sup>292</sup> The term *kufr* implies both infidelity and blasphemy, through an individual disbelieving in the Qur’an or in any of the tenets of Islam. It also indicates the various degrees of “covering”, “hiding” and extending this, it means “disbelief.”<sup>293</sup> An infidel is an individual who manifests their disbelief with overt blasphemy. *Kufr* is such a strong term, that it “has more shocking and dreadful associations in the mind even of a Muslim of today, than does the word “unbelief” for a Western believer.”<sup>294</sup> *Kufr* implies not just the passive form of unbelief, but active rejection and the loss of any respect for revelation or the sacred texts of the Qur’an, *Sunnah* and *ahadith*. It is deliberate acts which are used to oppose the existence of Allah. T. B. Irving links the connection between *Kufr* and *Kafir* (كافر).

*Kufr* .....means ‘disbelief’ as well as ‘ingratitude’; while a *kafir*, which is the present participle of the same root, is the ungrateful pagan or atheist who refuses to concede that God has any role within His creation.<sup>295</sup>

However, *kufr*, is a generalised term including many acts of infidelity within a broad category. The major forms of *kufr* have been highlighted in various documents, all of which graphically describe the differing levels of the possible alternatives.

### 2.2.1 *Kufr* according to the Qur’an.

Toshihiko Izutsu has worked extensively on the meaning and structure and significance of the use of *kufr* within the Qur’an. He states unequivocally that :

*Kufr* is undoubtedly the greatest sin. *Kufr* forms, not only the very pivotal point round which revolve all the other negative qualities, but it occupies in fact such an important place in the whole system of Koranic ethics that a clear understanding of how it is semantically structured is almost a

<sup>292</sup> Hughes, Thomas, *Dictionary of Islam*, op.cit., p281

<sup>293</sup> Cyril Glasse, *The Concise Encyclopaedia of Islam*, Stacey International, London, 1989, p241

<sup>294</sup> Ibid., p241

<sup>295</sup> Irving, T. B., *Islam and Social Responsibility*, 1980AD/1400AH, The Islamic Foundation, Leicester, England, (first edition, 1974AD/1394AH), p6. Also see O’Sullivan, Declan, ‘Taliban Destroy the Buddha Statues in Afghanistan : Does Islam Really Believe : ‘There is no compulsion in Religion’ (Al-Baqarah, 2:256)?’ in *Le Courrier Du Geri – Recherches D’Islamologie et de Theologie Musulmane*, Vol. 4, No.1/2, Printemps-Hiver 2001, GERI (Groupe d’Etudes et de Recherches Islamologiques) in l’Université Marc Bloch de Strasbourg, France, p45



necessary prerequisite to a proper estimation of the most positive qualities as well.<sup>296</sup>

Even a brief, cursory, reading of the Qur'an will reveal that *kufr* presents itself in such an influential role in even the general approach towards human conduct and character. Its basic meaning, in the Arabic root letters *KFR*, is 'covering.' In the context of bestowing and receiving benefits, the words that are used naturally mean 'to cover; i.e. ignore knowingly, the benefits which one has received' and thus, 'to be unthankful, to be an ingrate.'<sup>297</sup>

This understanding of *kufr*, as 'to cover' and to 'knowingly ignore' could lead to a person being accused of being a *kafir* (unbeliever), as *kafir* is defined as 'one who hides or knowingly covers up the truth'.<sup>298</sup> Although it is one form of 'unbelief', the legal position held for a *kafir* is the most severe. If a *kafir* is considered to be an apostate (*murtadd* – مرتد) they can potentially receive the death penalty, but the actual form of 'unbelief' they had committed may not have been their lack of faith or their rejection of God, which the death penalty is there for.

This point highlights the consequences that can occur, with the ambiguous loose meanings of the words used, that all mean 'unbelief' in one way or another. It also shows the amount of confusion that is present, when trying to identify what kind of 'disbelief' a person committed.

The Qur'an repeatedly refers to Allah as the Almighty and the God of grace and goodness. Humans then, owe Him everything in the very subsistence of existence due to His boundless mercy. Humans should be willingly grateful for His goodness, which Allah delivers at every moment of a human's life span. The *kafir* is a person who, having received Allah's gifts of benevolence still shows no gratitude in their conduct, or can even act rebelliously against Allah as their Benefactor. This view of ingratitude manifests itself in a fairly radical form by *takdhib* which, in the form *kufr-al-takdhib*

<sup>296</sup> Izutsu, Toshihiko, *The Structure of the Ethical terms in the Koran : A Study in Semantics*, 1959, Keio Institute of Philological Studies, Tokyo, Japan, Vol. II, p113 also see Waldman, Marilyn Robinson, 1968, 'The Concept of *Kufr* in the Qur'an' in *Journal of the American Oriental Society*, Volume 88, No. 1, American Oriental Society, Connecticut, U.S.A., p442 [this article was also published simultaneously as *American Oriental Series*, Vol. 53] ,

<sup>297</sup> Izutsu, Ibid., p113

is ‘crying out a lie’ to the Prophet Muhammad and his message. For this reason, Izutsu argues, that *kufir* is used frequently as the exact antonym of the term *iman* ‘belief.’<sup>299</sup>

Within the Qur’an the most representative opposition to *mu’min* ‘believer’ or *muslim* (literally : ‘who has surrendered’) is *kafir*. Izutsu states that this fact expresses many points in both ways, positive and negative. On one side, it appears that *kufir*, having been used so often in contrast to *iman* lost much its original semantic meaning of ‘ingratitude’ while assuming more on the meaning ‘of dis-belief.’ The term then gradually became used moreso in the latter sense even where, Izutsu suggests, that it has “hardly any question of ingratitude.”<sup>300</sup>

He values this assessment as he believes that the term *kufir* is used in the Qur’an in a context related to ‘belief’ rather than ‘thankfulness.’ To defend this conjecture, he states that this correlates to the fact that in semantic influence of neighbouring words, the very meaning of ‘belief’ must have been strongly influenced by the original meaning of *kufir* as ‘ingratitude.’

He further argues that *kufir*, in meaning the denial of God as the Creator manifests itself very obviously in the various acts of insolence, haughtiness and presumptuousness, for example in words such as “*Istakbara* ‘to be with pride’ and *istaghna*[y] ‘to consider one’s self as absolutely free and independent.’ ”<sup>301</sup> *Kufir*, in this context, forms the exact opposite of such an attitude of *tadarru* ‘humbleness’ and compares by clashing directly on the idea of *taqwa*[y] ‘fear’ which is an important role in the centre of the Islamic concept of ‘religion’ in the broadest terms.

Concentrating on the emphasis of *kufir* as ‘ingratitude,’ Izutsu argues that sometimes in the Qur’an this word is used without any theological reference. He relates to Surah 12, *Yusuf*, as being of particular interest in such semantics, as it provides many

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<sup>298</sup> For further detailed discussion on *kafir* see below.

<sup>299</sup> Ibid., p113. Further information on the term *takdhib* can be found on the section covering ‘blasphemy.’

<sup>300</sup> Ibid., p113

<sup>301</sup> Ibid., p114



examples of words in a clearly secular use. He maintains this point by quoting 26:17-18 which use the term *kafir* with a definitely secular, or 'non-theological' meaning :

And he said, 'Did we not bring thee up amongst us as a child? And didst thou not dwell amongst us for many years of thy life? And yet thou didst do the deed which thou didst. Thou art of the ungrateful (*kafirina*).<sup>302</sup>

As this verse is a conversation between Pharaoh and Moses, it is in a patently non-theological context in its meaning, as it concerns the manslaughter by Moses of an Egyptian subject of the Pharaoh.<sup>303</sup> Izutsu concludes that nothing implies any element of 'ingratitude' upon which the term *kufr* and the entire semantic category that the root of *KFR* is based on. Referring specifically to the use of *kufr* in a *theological* context, he cites from the Qur'an a fascinating example which focuses not on the human approach towards God, but quite the opposite. Verse 21:94 presents *kufr* as an approach that is simply impossible for God to implement towards humans. The verse stipulates that just as it is a necessity, as a religious duty, for humans to be grateful of God and thankful for His acts of grace it is, on equal terms, the role of God to be bound by virtue of His goodness. God will always proffer 'mercy' and be sympathetic to humans for the pious nature and good works they do as devout believers, having responded to the divine call brought forward by His apostle. Thus, God never 'ignores' the good and decent services of the sincere believer, but acknowledges them for the individual and records the acts. Here, the concept of 'gratefulness' is mutual between the two parties and the basis of ones genuine 'Faith' and devotion to God will become apparent on the Day of Judgement, in the reward of Heavenly Gardens :

فَمَنْ يَعْمَلْ مِنَ الصَّالِحَاتِ وَهُوَ مُؤْمِنٌ فَلَا كُفْرَانَ لِسَعْيِهِ وَإِنَّا لَهُ كَاتِبُونَ

Whoso does good works as a pious believer, there shall be no ingratitude (*kufr*) [sic] for his efforts. Verily, We Ourselves write them down for him. [21:94]<sup>304</sup>

<sup>302</sup> Ibid., p38

<sup>303</sup> Ibid., p38 also see the comments on these verses made by Asad, Mohammad, *The Message of the Qur'an : Translated and Explained*, 1980, Dar al-Andalus Limited, Gibraltar, in footnote 10, p561 and in footnote 15 of Surah 28, *Al-Qasas*, p589 also see Ali, Abdullah Yusuf, *The Holy Qur'an : Text, Translation and Commentary*, 1969, Sh. Muhammad Ashraf, Kashmiri Bazar, Lahore, Pakistan, Vol. II, in footnote 3148, p949 and Daryabadi, Maulana Abdul Majid, *Tafsir-ul-Qur'an : Translation and Commentary of the Holy Qur'an*, (Preface dated as 1941), Islamic Book Foundation, Islamabad, Pakistan, Vol. III, in footnote 166, p264-265.

<sup>304</sup> Izutsu, Toshihiko, *The Structure of the Ethical terms in the Koran*, Ibid., p115, Qur'an, 21:94

The reason that the citing of *kufr* in this translation has been highlighted as “*sic*” is because the actual word in the Qur’an is *kufran* ( كُفْرَانٌ ). This clearly shows that either Izutsu is using the source of the word, where it is derived from (*kufr* – كُفْرٌ), in reference to the concept of ‘ingratitude,’ or that the translation is inadequate with its genuine meaning. This factor can emphasise the problems that translations and interpretations - even when undertaken by efficiently skilled professionals - can lead to misinterpretations, or the misuse of words, by implementing the roots. This can lead to a confused, or certainly an ambiguous conclusion, as it is left open to the reader’s own interpretation of the ‘point’ being raised.

Izutsu also suggests that it is evidential from this verse, 21:94, that God will always reciprocate any act of piety by a believer with equal thanks. This particular verse is of great interest and of some importance, as it expresses *kufr* in essence as ‘ungratefulness’ even in the use here of the term *kufr* in the context of God’s attitude towards believers. However, on the contrary, he quotes other verses that involve the human approach towards God and His favours. It can be found here that, although God proffers His unlimited favours and good will, humans still remain stubborn and thus, thankless in their own reciprocation towards God. One verse Izutsu quotes is 14:33 :

أَلَمْ تَرَ إِلَى الَّذِينَ بَدَّلُوا نِعْمَةَ اللَّهِ كُفْرًا وَأَحَلُّوا قَوْمَهُمْ دَارَ الْبَوَارِ  
جَهَنَّمَ يَصْلَوْنَهَا وَبِئْسَ الْقَرَارُ

Hast thou not seen those who paid back God’s favours with ungratefulness (*kufr*), and induced their people to dwell in the abode of perdition? In Gehenna they shall roast – an evil resting place indeed!<sup>305</sup>

<sup>305</sup> Qur’an, 14:33, Ibid., p115. This verse is also cited as 14:28 in the translation of the Qur’an by Abdullah Yusuf Ali, (See Ali, Abdullah Yusuf, *The Holy Qur’an : Text, Translation and Commentary*, 1969, Sh. Muhammad Ashraf, Kashmiri Bazar, Lahore, Pakistan, Volume 2, p628). It is clear that differing versions of the Qur’an offer the same verse but in different verse numbers. To any general reader this could offer some confusion and a mis-reading as, when only using the verse numbers that have been cited in the literature without the text of the verse, the reader could attempt to discover the text message, by reading a version of the Qur’an which is numbered differently, which means that they would be reading an entirely different text. This could obviously lead to a misunderstanding of the message referred to in the literature, or even some bewilderment of the verse’s relevance to the topic it was cited for.



Izutsu then argues that within the following two Qur'anic verses, 16:113-115 and 2:147, *kufr* is expressed as total antithesis of *shukr* - 'thankfulness' :

Here is similitude which God has just struck : [there was] a city, secure and in peace, its provision coming to it in abundance from all quarters. But it was ungrateful for God's favours, so God caused it to taste the garment of death and fear for what they were doing.....Eat, then, of what God has provided you with, lawful and good things, and to be thankful for God's favours, if it is really Him that you worship.<sup>306</sup>

[I have bestowed upon you favours (*sic*).] So remember Me, and I will remember you. Be thankful to me, and be not ungrateful to Me.<sup>307</sup>

Izutsu also discusses the verses 80 through to 85 in Surah *An-Nahl*, 16, which explicitly declares that God openly expects humans to be grateful to Him, in reciprocation for the favours and grace that He generously offers. These verses express the depth of God's unquestionable beneficence and that He offers all these things to humans so, in return, "that haply he may give thanks." It also states that humans still deny any thanksgiving for the blessings of God, while being very aware of their presence. Thus, God reaches the conclusion that "the great majority of men are *kafir*."<sup>308</sup> Izutsu cites the verses as :

God brought you forth out of the wombs of your mothers when you knew naught about it, and He made for your hearing, and sight, and hearts, *that haply you will be thankful*. Have they not seen the birds subjected in mid-air? None holds them there but God. Verily, *this must be a [divine] sign for a people who believe*. And God it is who established for you as a dwelling-place your houses; and make for you houses out of the skins of cattle, very light to carry both on the day you journey and on the day you abide; and with their wool, fur, and hair, He prepared for you furniture and articles of enjoyment for a while. And God it is, too, who has made you, of that which He created, shelter from the sun, and established the mountains as places of refuge, and made for you shirts to keep off extreme heat, and also shirts to protect you from each other's violence. *Thus He fulfils His favours towards you, that haply you may surrender* [i.e. become good Muslims in return for this extraordinary benevolence of God]. But if, with all this, they still turn their backs, thy [i.e. Muhammad's] mission is only to deliver the clear message. *They recognise the favours of God, and yet they deny them, for most men are un-grateful*. [16: 80-85]<sup>309</sup>

(Italics are from the original text)

<sup>306</sup> Izutsu, Toshihiko, *The Structure of the Ethical terms in the Koran*, Ibid., p115, Qur'an, 16:113-115

<sup>307</sup> Ibid., p115, Qur'an, 2:147

<sup>308</sup> Ibid., p117

<sup>309</sup> Ibid., p117. Qur'an, 16: 80-85

Another word related to *kafir*, as is used in the Qur'anic verse 17:69, is *kanud*, which has approximately the same meaning. The root of *kanud* is *KND* and means 'to be ungrateful, to refuse to acknowledge any benefit received.'<sup>310</sup> Assessing the context the word is used in, Izutsu suggests that *kanud* projects the idea that humans are inclined to manifest their ingratitude for Him by grasping hold of wealth in clear greed. They also offer resentment towards providing others with even the smallest portion of what they have received from God. The Prophet Muhammad emphasised that all people should proffer the good things given to them by God onto the poor and the needy, as it showed a public appearance of gratitude each person felt towards God, in thanks for the privileges they had been given.<sup>311</sup> The word *kanud* appears in 100:6-8 as :

Indeed, how ungrateful (*kanud*) man is to his Lord! Verily, he himself is a witness of that. Indeed, how passionate he is in the love of good things!  
[100:6-8]<sup>312</sup>

Within the Qur'an, it is clear that *kafirs* sneer and insult at God and everything he sends to earth. This attitude of mockery is highlighted as a characteristic point amongst all the evil acts of sin. It was held that the people of *Jahiliyyah*<sup>313</sup> were characterised

by jovial levity and foolish carelessness. We know already that this carelessness originated in their worldly mindedness. For those who saw nothing beyond the present earthly life, a religion preaching the eternal future life could in any way be no more than a laughing-stock.<sup>314</sup>

The most commonly used expressions in the Qur'an in relation to this mockery attitude are *ittakhadha huzu'an* ('to take for mockery') and *istahza[y]* ('to mock at'), both of which derive from *HZ*'.<sup>315</sup> Izutsu quotes three verses from the Qur'an that indicate a direct connection between *shirk* – *kufr* and *istahza[y]* :

Proclaim loudly whatever thou art commanded, and pay no attention to the *mushrik*. Verily, We are enough to defend thee from the mockers

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<sup>310</sup> Ibid., p117.

<sup>311</sup> Ibid., p117.

<sup>312</sup> Ibid., p117. Qur'an, 100:6-8

<sup>313</sup> *Jahiliyyah* means 'Ignorance,' or 'The Age of Ignorance' in the pre-Islamic times, see O'Sullivan Declan, 'The Comparison and Contrast of the Islamic Philosophy, Ideology and Paradigms of Sayyid Qutb, Mawlana Abul A'la Mawdudi and Fazlur Rahman' in *The Islamic Quarterly*, Second Quarter of 1418/1998, Vol. XLII, Number 2, p102, p107-108, p110, p121.

<sup>314</sup> Izutsu, Toshihiko, *The Structure of the Ethical terms in the Koran*, op.cit., p129-130

<sup>315</sup> Ibid., p130



(*mustahzi'ina*, participial form of *istahza[y]* ), from those who set up with God other gods. (15:94-96)

وَإِذَا رَأَوْا الَّذِينَ كَفَرُوا إِذَا يَتَّخِذُونَكَ إِلَّا هُزُوءًا أَهْذَا الَّذِي يَذْكُرُ آلِهَتَكُمْ وَهُمْ  
بِذِكْرِ الرَّحْمَنِ هُمْ كَافِرُونَ

Whenever those who are *kafirs* behold thee, they make a mockery of thee, [saying,] 'Is this the fellow who talks [disparagingly] of your gods?' Thus they reveal themselves as *kafirs* at the mention of the Merciful God. (21:37)

ذَلِكَ جَزَاؤُهُمْ جَهَنَّمَ بِمَا كَفَرُوا وَاتَّخَذُوا آيَاتِي وَرُسُلِي هُزُوءًا

Such is their recompense : Gehenna, because they acted [in the world] as *kafirs*, making a mockery of My signs and My Apostles. (18:106)<sup>316</sup>

Another relevant word here, that Izutsu argues as meaning exactly the same thing as is *istahza[y]* is *sakhira* or *istaskhara*, from the root *S-KH-R*, and is also used in the Qur'an in the same context. They have such a powerful connection, that the connotation of *istahza[y]* can be analytically exchangeable, almost in a tautological form, with *ittakhadha huzu'an* ('to take for mockery'). Also then, *sakhira* or *istaskhara*, can be analytically substituted with *ittakhadha sikhriyyan*, as the latter part of the phrase is the noun derived from the root *S-KH-R*. More than sufficient examples of the equivalent words and the synonymic relationship between them, can be seen, as it is clearly shown in the Qur'an in several verses as :

Apostles have been mocked at (*ustuhzi'a*, passive construction) before thee [Muhammad], those that mocked at (*sakhira min*) them [i.e. the Apostles] ended by being surrounded on all sides by that which they used to mock at (*yastahzi'una*). (6:10 and 21:42)

Thou [Muhammad] art filled with wonder [at God's potence], but they [do nothing but] mock (*yastaskhiruna*, from *istaskhara*, *S-KH-R*). When they are reminded, they remember not, and when they see a sign, they mock it (*yastaskhiruna*), and say, 'This is obviously naught but sorcery.' (37:12-15)

Verily [this is said by God to the *kafirs* on the Day of Judgement], there was a party of My servants who said, 'Our Lord, we do believe, so forgive us and have mercy upon us, for Thou art the most merciful of all.' You,

<sup>316</sup> All three Qur'anic verses are cited from Izutsu, Toshihiko, *The Structure of the Ethical terms in the Koran*, Ibid., p130.

however, took them for mockery (*ittakhadhtumu-hum sikhriyyan*), and in laughing at them you were led to forget My remembrance. (23:111-112)<sup>317</sup>

The point raised by Marilyn Robinson Waldman, concerns the weight of the value in the use of the terms *kufṛ* and *kafīr* with all other *KFR* root words in the Qur'an.<sup>318</sup> Within the Qur'an the root *KFR* has a very common appearance, which has been calculated to be approximately five hundred times in total.<sup>319</sup>

However, although Waldman appreciates the systematic approach and the progressive work that Izutsu offers in the assessment of the Qur'an's meaning, she does claim that there are still problems of interpretation that arise, which "a *chronological* approach to the development of Qur'anic concepts can over-come."<sup>320</sup> (Italics from the original text). Waldman sees that these problems seem to derive from researchers having not emphasised the chronological and historical development of the Qur'anic concepts. She suggests, in an example, that some focus more on perceiving the concepts to be

mere composites of their many uses in the Qur'an, and therefore has to *reconcile* elements which should rather be treated as several stages in the cumulative development of a single term; another sees too radical a shift between meanings which are in fact cumulative.<sup>321</sup> (Italics from the original text).

She argues that even Izutsu, who focuses on the dynamic aspects of the concepts within the Qur'an, actually concentrates his analysis through perceiving the transformation, rather than the accumulation of the meanings over time. She defends this approach due to Izutsu's understanding that the Qur'an is divided into small, or continuous, chronological periods, but he still assesses the Qur'an as just one single chronological unit. His analysis, when making comparisons within the Qur'anic text, is done so not using continuous chronological periods, but between cross-sections

<sup>317</sup> All four Qur'anic verses are cited from Izutsu, Toshihiko, *The Structure of the Ethical terms in the Koran*, Ibid., p130-131

<sup>318</sup> Waldman, Marilyn Robinson, 1968, 'The Concept of *Kufr* in the Qur'an' in *Journal of the American Oriental Society*, Volume 88, No. 1, American Oriental Society, Connecticut, U.S.A., p442 [this article was also published simultaneously as *American Oriental Series*, Vol. 53] ,

<sup>319</sup> Waldman, Ibid., p442, Also see Rudi Paret, *Mohammed und der Koran; Geschichte und Verkündigung des arabischen Propheten*, Stuttgart, W. Kohlhammer, 1957, p74

<sup>320</sup> Waldman, Ibid., p442

<sup>321</sup> Referring to the "single term," Waldman cites on the work by Helmer Ringgren, 1951, 'The Conception of Faith in the Koran,' in *Oriens*, Vol.4, p1-p20 and on the "the radical shift" she refers to Izutsu, Toshihiko, Izutsu, Toshihiko, *The Structure of the Ethical terms in the Koran : A Study in Semantics*, 1959, Keio Institute of Philological Studies, Tokyo, Japan, Vol. II, p119ff and also Izutsu, Toshihiko, *God and Man in the Koran : Semantics of the Koranic Weltanschauung*, 1987, Ayer Company Publishers Inc., Salem, USA (reprint of 1964, Keio Institute of Philological Studies, Tokyo, Japan,) Vol. V, p233, Waldman, Ibid., footnote 5 and 6 on p442



“taken from grosser and more imprecise divisions, such as Meccan and Medinan.”<sup>322</sup>

Waldman suggests that while the focus is on the accumulation and relationships among the meanings, Izutsu uses semantic models concerning the different meaning of the root *KFR*, that tend to become rather static and oversimplified. The cross sections he uses are too reduced in number, “and for that reason alone suggest too abrupt a change in meaning from one time to another.”<sup>323</sup>

Waldman then argues that to overcome this form of a methodological approach, the chronological order of the relevant Qur’anic Surah that deal with the development of *KFR* meanings is more than being just methodological. She argues that “It is indispensable for a proper understanding of the historical development of the Qur’an as a whole and for the purpose of evaluating the fate of its concepts in post-Qur’anic thought.”<sup>324</sup> It is also important to note that the chronological assessment of the root *KFR* can offer a widely based value, shedding light on the more narrower Qur’anic base, which were the sources of the later definitions of *kufr*. It also emphasises the chronological and historical development of the Qur’an in a broader level. She supports this approach with the view that :

Perhaps more than any other concept, its development is tied to the history of Muhammad’s preaching appeal, and especially to his poor reception by his fellow-Meccans, his growing tension with them, and his eventual break from them.<sup>325</sup>

Initially, the root *KFR* appears to be very adaptive and then gradually develops, which coincides with Muhammad’s own change of view towards the opponents. Other shades of the meaning, move it from being amongst other roots that describe the opponents, which then makes *KFR* become the strongest description of Muhammad’s opponents. It also becomes the most common opposite to *AMN*. It becomes increasingly connected to *shirk*, while also undergoing the vast theoretical development in reaction to the stubbornness of the enemies of Islam, thus it emerges

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<sup>322</sup> Waldman, Ibid., p442-443

<sup>323</sup> Waldman, Ibid., p443

<sup>324</sup> Waldman, Ibid., p443. Waldman also cites the work of Blachère, Régis, *Le Coran; traduction selon un essai de reclassement des sourates*, G.P.Maisonneuve, Paris, France, 1949, Vol.2, [Waldman, Ibid., footnote 8 on p443]

<sup>325</sup> Waldman, Ibid., p443

as a concept on its own. Towards the end of Qur'an, *KFR* tends to then refer to the category of people who should be fought against by the *mu'minin* (faithful).<sup>326</sup>

Waldman also comments on the use of the chronological development of *KFR*, put forward by Régis Blachère, in his work *Le Coran; traduction selon un essai de reclassement des sourates*. She argues that this system assumes that the relevant Surah have been arranged both with logical consistency and in the correct historical order. The problem present here is that :

Yet no multiplicity of criteria for arrangement can completely avoid the possibility that the source for the historical events according to which the *surah-s* [sic] have been arranged may often ultimately be the Qur'an itself; or, put another way, one major source of certain historical writers was certainly Qur'anic exegesis.<sup>327</sup>

For a clearer approach, Waldman feels that it is essential to avoid circularity of the information. This can be achieved by assessing both the logical and historical development of the concept of *KFR*. She also comments that it is necessary to be aware that Blachère's sequence-order of Surah cannot be considered to be undoubtedly true, otherwise this may press research on the relevant Surah's with "a chain of reasoning opposed to the weight of logical consistency. And in fact, using the concept of *kufir* as a guide, it would seem that in places Blachère's order could be improved upon."<sup>328</sup>

Within Blachère's chosen Surah for the category of the 'First Meccan Period,' the root *KFR* is among a large group of roots, including *KDhB*, *TGhY*, *ZLM* and *AThM*, that are used to describe those resentful and hostile to Prophet Muhammad and the Call. This being so, the root *AMN* is also one of several roots that refer to those who accept the new religion. *KFR* is not dominant in the beginning, with its meaning being

<sup>326</sup> Ibid., p443

<sup>327</sup> Ibid., p443

<sup>328</sup> Ibid., p443. Waldman also suggests that a similarly cautious approach should be taken with the work of John E. Merrill, in his article 'Dr.Bell's Critical Analysis of the Qur'an' in *The Moslem World*, Vol 37/2, April, 1947, p148. See Waldman, Ibid., in footnote 9 on p443.

As an illustration of how Régis Blachère's order of the Qur'anic Surah may need to be improved upon she offers : "For example, 59 = XV, which contains in verse 2, '*Rubbama yawaddu alladhina kafaru law lanu muslimin*' (Perhaps those who *kafaru* may wish they were Muslims), would seem better placed after the concept of *islam* has been developed, for instance, after 63 = XLIII, in which verse 69 identifies *mu'min* with *muslim*." Waldman, Ibid., in footnote 10 on p443. In explaining the Roman and Arabic numerals, she states that "The Roman numerals refer to the 'Uthmanian order; the Arabic, to



tied to other roots, particularly of which is *KDhB* in its second form, as “to deny something,” suggesting that those accused of this act hold the preachings to be false. Even before *KFR* appears in the Qur’an, the use of *kadhhaba* is very common, in virtually each relevant Surah, whereas *kafara* appears in just a quarter of them.<sup>329</sup>

In the first use of *kafara*, Waldman argues that its meaning is not considered very open, or clear. She expands this by stating that :

The *kafirun* are said to be planning a plan, and it is implied that they have thought the Day of Judgement a joke [*sic*]; God assures Muhammad that the Day is indeed no joke, and that His plans for the world will overcome theirs. He ends by implying *kufr* is only a condition of the moment, that Muhammad will be accepted as His messenger in time, and commands that the *kafirun* be respited : *famahhili ‘l-kafirina amhilhum ruwaydan* (‘So respite the *kafirun*; grant them a delay for a little while.’

Surah 9 = LXXXVI, verse 17)<sup>330</sup>

Although unclear in its ‘first’ mention here, the actual connection between the two terms *kafara* and *kadhhaba* becomes apparent, as God also says that some men never believe that they will be called to Him. The unbelievers refuse to *amana*, which Waldman translates as :

(presumably meaning here to accept that they *will* be called to God; see 10 = XCV, 6-7) and thus to insure an unceasing reward in the life to come : *bal alladhina kafaru yukadhdhibunu* ”(Nay, those who are grateful give a lie) (19 = LXXXIV, 22). Here as elsewhere, (24 = LXIX), the connection between the two roots is explicit. (Italics from the original text)<sup>331</sup>

She also argues that if *kufr* is distinct at all, this occurs in the appearance of peoples mannerisms to ‘give a lie.’ Verbal tenses in the verse just shown, indicates that the imperfect person is the consequence, or the very manifestation, of the perfect one. Also connected to a different root, *kufr* promotes the evil nature of unbelievers, such as in Surah ‘*Abasa*, 17 = LXXX, verse 42 which reads as : *ula’ika hum al-kafaratu, al-fajaratu* (Those are the ungrateful, the evil-doers).<sup>332</sup> Waldman suggests that *kafara* may hold the meaning of ‘deny’ on its own, but this form of denial is more

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Blachère’s. The ‘Uthmanian order used is that of the 1929 official Cairo edition.” See Waldman, *Ibid.*, in footnote 11 on p444

<sup>329</sup> Waldman, *Ibid.*, in footnote 11 on p443-444

<sup>330</sup> *Ibid.*, p444.

<sup>331</sup> *Ibid.*, in footnote 11 on p444

fundamental than the lie given by the *kadhib*. *Kafara* has much more of a connection with a denial of the very clear signs, of which the *mu'min* perceive as an unquestionable proof of God's sent message.

A paradox is introduced, where the state of *kufr* leads to the guilty being cut off or concealed from God, while not being able to hide from Him, whereas that whole concept had not been developed in the early stage of the Qur'an. Waldman argues that the latter stage is often cited in the Qur'an, such as in Surah *Al-Inshiqaq*, 19 = LXXXIV, in verse 25<sup>333</sup> and that the former is hinted at, by the repeated use of *kufr* in a shaded form, where it implies to be covered over, or some attempts to be concealed. This meaning, she suggests, is more literary than any visible scene. One example given, is the description of the *kafir* on the Day of Judgement in Surah '*Abasa*, 17 = LXXX, in verses 40-41 : *wa-wujuhun yawma'idhin 'alayha ghabaratun, taraquha qataratun*, ('And dust will be over their faces on that day; darkness will cover over them.'). Waldman also offers Surah *Al-Ma'arij*, 33 = LXX, verse 44 as an example.<sup>334</sup>

At this point, she argues that :

the *kafir* is not one who *cannot* see the signs of the divine presence and power which are understood as much by the *mu'min*, but simply one who does not see or who refuses to see them.<sup>335</sup>

In the sense of being a 'state of mind,' *kufr* is often used in a generic form. This factor will be explained further by Mohammad Hashim, below.<sup>336</sup> It can be used as a summary of the other terms that are used to describe those who oppose the 'Warning.' Such activities of the *kafir* would include giving the lie (*kadhdhaba*), fabricating a lie against God (*ifk*), plotting, mocking (*haza'a*) and numerous other negative approaches, as stated in Surah *At-Tur*, 22 = LII, verse 30 onwards.<sup>337</sup>

<sup>332</sup> Waldman, Ibid., p444. Waldman explains that "It should be noted that the juxtapositions of these various roots are not always conceptually significant, but seem often to be made for stylistic variation and added flavour." Waldman, Ibid., in footnote 12 on p444

<sup>333</sup> Surah *Al-Inshiqaq*, 84:25 reads as "Except those who believe and do good; for them is a reward that shall never be cut off," Maulvi Mohammad Ali, *The Holy Qur'an*, ibid., p1176.

<sup>334</sup> Waldman, Ibid., p444. Waldman also offers Surah 33 = LXX, verse 44 as an example. Surah *Al-Ma'arij*, 70:44 reads as "Their eyes cast down, a veil of shame and dejection shrouding their faces. That will be the Day which has been promised to them," Turner, Colin, *The Quran : A New Interpretation*, Textual Exegesis by Mohammad Baqir Behbudi, Curzon Press, 1997, *Al-Ma'arij*, (cited as verse 45), p346.

<sup>335</sup> Waldman, Ibid., p444.

<sup>336</sup> Ibid., p444. Also see Kamali, Mohammad Hashim, *Freedom of Expression in Islam*, op.cit., p219.

<sup>337</sup> Waldman, op.cit., p444-445.



### 2.2.2 Different Categories of *Kufr*.

An important document to be included in this literature of relevant material is the one entitled *Tafsir al-Qur'an al-'Azimi*, by Abu'l Fida Isma'il Ibn al-Kathir.<sup>338</sup> A brief overview of the various forms of *kufr* defined by Ibn al-Kathir include:

***kufr al-inkar***, which defines an individual who neither acknowledges or recognises Allah. The person is referred to as someone in denial with both the heart and the tongue, based on *Sura Nahl* 16 : 83; "Allah says - They recognise the favours of Allah, yet they deny them. Most of them are disbelievers."

***kufr al-djudud*** defines an individual who recognises Allah, acknowledging the truth in the heart, but rejecting any acts or use of the tongue. People in this category refer to themselves as being a devout Muslim, while they refuse to engage in the physical acts of *salat* (prayers) or paying *zakat* (alms tax). This form is based on *Sura Naml* 27 : 14 "Allah says - They denied them [our signs] even though their hearts believed in them, out of spite and arrogance."

***kufr al-mu'anada*** defines an individual who recognises and acknowledges Allah with appropriate words, but remains an unbeliever [obdurate] through envy or hatred.

***kufr al-nifaq*** defines an individual who has disbelief by utilising hypocrisy. They express an outward behaviour of belief, but simultaneously hold an internal disbelief. Such individuals are referred to as being a *munafiq* [hypocrite]. This is based on *Sura An Nisaa* 4 : 145 "Allah says - Verily the hypocrites will be in the lowest depths of Hell. You will find no one to help them."

***kufr al-'inaad*** defines an individual who holds disbelief through stubbornness. This refers to those who are fully aware of Islam and admit their complete knowledge of it, but refuse to state any declaration, or committing themselves to unquestionable belief.

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<sup>338</sup> Ibn Kathir, al-Qurayshi al-Dimashqi 'Imad al-Din Abi al-Fida' Isma'il, *Tafsir al-Qur'an al-'Azimi*, Dar al-Fikr, Beirut, 1386AH/1966AD. Also see *Tafsir ibn Kathir* quoted on *Different types of Major Kufr [Disbelief]*, On-line, Internet, viewed on March 19, 1998, Available FTP : <http://www.qmw.ac.uk/~ra6148/majrkufr.htm>

This is based on *Sura Qaaf* 50 : 24 “Allah says - Throw into Hell every stubborn disbeliever.”

*kufr al-kibr* defines an individual who holds disbelief through arrogance and pride. The recognised disbelief by the *iblis* [devils] is given as an example of such *kufr*.

*kufr al-instihaal* defines an individual who holds disbelief through attempting to make anything religiously deemed *haram* [unlawful] to appear as *halal* [lawful], such as alcohol or adultery. People who try to interfere with revealed righteousness, thus move outside the territory of their faith.

*kufr al-kurh* defines an individual who holds disbelief through expressing that they are insulted and offended by the commands offered by Allah. This is based on *Sura Muhammed* 47 : 8-9 “Allah says - Perdition [destruction] has been consigned to those who disbelieve and He will render their actions void. This is because they are averse to that which Allah has revealed so he has made their actions fruitless.”

*kufr al-istihzaha* defines an individual who holds disbelief through acts of mockery and derision. This is based on *Sura Tawbah* 9 65-66 “Allah says - Say: Was it at Allah, His signs and his apostles that you were mocking? Make no excuses. You have disbelieved after you have believed.”

*kufr al-i'raadh* defines an individual who holds disbelief due to avoidance. This *kufr* applies to those who are considered as having deliberately refused to accept the truth of the belief of Islam. This is based on *Sura kahf* 18 : 57 “Allah says -And who is more unjust than he who is reminded of his Lord's signs but then turns away from them. Then he forgets what he has sent forward [for the Day of Judgement].”

*kufr al-istibdaal* defines an individual who holds disbelief by attempting to substitute the *shari'a* system. This form of *kufr* has three alternative methods *a*: Complete rejection of *shari'a*, without denying this; *b* : Denying and rejecting *shari'a* or *c* : substituting *shari'a* with human-made laws. This is based on *Sura Shuraa* 42 : 8

“Allah says - Or have they partners with Allah who have instituted for them a religion which Allah has not allowed” and *Sura Nahl* 16 116 “Allah says - Say not concerning that which your tongues put forth falsely [that] is lawful and this is forbidden so as to



invent a lie against Allah. Verily, those who invent a lie against Allah will never prosper.”<sup>339</sup>

Al-Imam Zain-ud-Din Ahmad bin Abdul-Lateef Az-Zubaidi (893H/1472AD), compiled a collection of *ahadith* (Traditions) by Al-Bukhari, in Az-Zubaidi's book *At-Tajrid As-Sarih*. This work was recently translated into English, entitled *The Translation of the Meanings of Summarized Sahih Al-Bukhari*, which presents a list of acts that are argued to fall within *Kufr*. The list he presents both matches and differs those forms of *kufr* as presented above, by Ibn al-Kathir. Initially he defines *Kufr* as meaning a person's unbelief in any of the articles of faith. These articles of faith are to believe in : Allah, His angels, His Messengers, His revealed Books, His Day of Resurrection and *Al-Qadar*, Divine Preordainments (Fate, i.e. whatever Allah has ordained must come).<sup>340</sup>

Az-Zubaidi presents his classification of disbelief into two groups. The first group is *Al-Kufr-al-Akbar* (The major disbelief). This form excludes one completely from the fold of Islam and there are five types of the major form of disbelief :

[1] *Kufr-al-Tak<sub>dh</sub>ib*. This form implies disbelieving the divine truth or denying of any of the article of faith. He argues that this form is based on the verse 39:32 -

Then who does more wrong than one who utters a lie against Allah and denies the truth [this Qur'an, the Prophet Mohammad, the Islamic Monotheism, the Resurrection and the reward or punishment according to good or evil deeds] when it comes to him! Is there not in Hell an abode for the disbelievers?<sup>341</sup>

[2] *Kufr-al-Iba' wat-Tak<sub>abb</sub>ur ma'at-Tasdiq*. This form implies the rejection and pride to submit to Allah's Commandments after the conviction of their truth. This form is based on 2:34,

<sup>339</sup> *Lisan al-'Arab*, vi, 495f, also see *The Encyclopaedia of Islam*, Volume IV, 1975, p408 and 'Shorter Encyclopaedia of Islam, op. cit., p206 also see *Tafsir ibn Kathir* quoted on *Different types of Major Kufr [Disbelief]*, On-line, Internet, March 19, 1998, Available FTP : <http://www.qmw.ac.uk/~ra6148/majrkufr.htm>

<sup>340</sup> Az-Zubaidi, Al-Imam Zain-ud-Din Ahmad bin Abdul-Lateef, *The Translation of the Meanings of Summarized Sahih Al-Bukhari, Arabic-English*, translated by Khan, Muhammad Muhsin, 1994, Maktaba Dar-us-Salam Publications, Riyadh, Saudi Arabia, p1076

<sup>341</sup> Az-Zubaidi, op. cit., p1076, Al-Qur'an , Az-Zumar, 39:32

And (remember) when We said to the angels : ‘Prostrate yourself before Adam.’ And they prostrated except *Iblis* (Satan), he refused and was proud and was one of the disbelievers (disobedient to Allah)<sup>342</sup>

[3] *Kufr-ash-shak waz-zan*. This implies any doubting or the lack of any conviction in the six articles of faith . This form is based on 18:35-37,

And he went into his garden while in a state (of pride and disbelief) unjust to himself. He said ‘I think not that this will ever perish. And I think not the Hour will come and if indeed I am brought back to my Lord (on the Day of Resurrection) I surely shall find better than this when I return to Him.’ His companion said to him during the talk with him : ‘Do you disbelieve in him Who created you out of dust (i.e. your father Adam), then fashioned you into a man? But as for my part (I believe) that he is Allah, my Lord and none shall I associate as partner with my Lord.’<sup>343</sup>

[4] *Kufr al-i’rad*. As described above, this implies knowingly turning away from the truth or deviating from the obvious signs which Allah has revealed. This form is based, as stated above by Ibn Kathir, on 4:415, but also on 46:3,

We created the heavens and the earth and all that is between them except with truth and for an appointed term. But those who disbelieve turn away from what whereof they are warned.<sup>344</sup>

[5] *Kufr al-nifaq*. This implies hypocritical disbelief. This form is based on 63:2-3

They have made their oaths a screen (for their hypocrisy). Thus they hinder (men) from the Path of Allah. Verily, evils is what they used to do. That is because they believed, then they disbelieved, therefore their hearts are sealed, so they understand not.<sup>345</sup>

Az-Zubaidi presents the second group of disbelief to be *Al-Kufr al-Asghar* (The minor disbelief). It is also referred to as *Al-Kufr-an-Ni’mah*. As opposed to *Al-Kufr-al-Akbar* (The major disbelief ), this form does not completely exclude one from the fold of Islam. It implies that disbelief manifests itself in ungratefulness for Allah’s Blessings or Favours.<sup>346</sup> It is based on 16:112,

And Allah puts forward the example a township (Makka), that dwelt secure and well-content; its provision coming to it in abundance from every place, but it (its people) denied the Favours of Allah (with

<sup>342</sup> Az-Zubaidi, op. cit., p1076, Al-Qur’an , *Al-Baqara*, 2:34

<sup>343</sup> Az-Zubaidi, op. cit., p1076-1077, Al-Qur’an , *Al-Kahf*, 18 : 35-38

<sup>344</sup> Ibid., p1077, Al-Qur’an , *Al-Ahqaf*, 46 : 3

<sup>345</sup> Ibid., p1077, Al-Qur’an , *Al-Munafiqun*, 63: 2-3

<sup>346</sup> Ibid., p1077,



ungratefulness). So Allah made it taste the extreme of hunger (famine) and fear because of that (evil, i.e. denying the Prophet Mohammad) which they (its people) used to do.<sup>347</sup>

### **2.2.3 Kufr and its definitional ambiguities.**

As an example of the complexity involved in defining the different forms of *kufr*, and in an effort to present an understanding of the differences of opinions that exist in identifying how the concept of *kufr* can be found and spoken of within the Qur'an, a simple comparison of these two lists of *kufr* can indicate certain problems that can occur. As can be seen in the lists above which, in size alone, are of a much smaller extent to the possibilities of differing forms of *kufr*, than it is possible to expand on in this present research. However, within these given lists there are two different forms of *kufr*, and more importantly, the Qur'anic references differ as presented by the two scholars involved, when describing the very same form of *al-kufr*. This obviously offers some interest in the different forms of methodology in the crime's definitions, that needs some highlighting now.

Both Ibn al-Kathir and Az-Zubaidi refer to the same *kufr* forms of *kufr al-nifaq* and *kufr al-i'rad* and both of their definitions of the acts are the same. As stated above, *kufr al-nifaq* refers to the 'hypocrisy' of stating belief publicly but denying it internally, and the form *kufr-al-i'rad* refers to a person who deliberately avoids accepting any idea of truth and/or matters of faith. However what differs are the Qur'anic verses that both Ibn al-Kathir and Az-Zubaidi refer to, that are in reference to these forms of *kufr*. For *kufr al-nifaq* Ibn al-Kathir cites the verse 4:145 whereas Az-Zubaidi cites the verse 63:2-3. Again, in *kufr-al-i'rad*, Ibn al-Kathir cites the verse 18:57 whereas Az-Zubaidi cites the verse 46:3.

In one perspective, this could show some level of difference of opinions in how the Qur'an understands 'unbelief,' and therefore how the different verses refer to it. Also, it could be argued to show that when citing from different verses when discussing the same form of *kufr*, then this could present the possible use of different interpretations of the Qur'an on these matters, by the Islamic jurists and Qur'anic exegetes. Certainly, for an unsympathetic 'outsider,' this would seem to be an ideal foundation

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<sup>347</sup> Ibid., p1077, Al-Qur'an , *Al Nahl*, 16:112

for a critical attack against the differing interpretations of the Qur'an and how the message of the Qur'an seems to be not consistently understood by the followers of Islam.

However, what needs to be borne in mind here is that, although both of the Qur'anic verses cited by Ibn al-Kathir and by Az-Zubaidi differ, both of verses are used as the foundation to define the very same form of *kuf*r. It can be easily argued that it is still true that with each verse used, they are both very relevant to the particular category of *kuf*r that they are attached to. It can be argued that in the Qur'an, the message it sends out concerning *kuf*r, is not founded on just one single verse, being the sole source of 'information' concerning this sin. When the Qur'an is studied in depth, it becomes clear that several verses were revealed in reference to many specific acts, and particularly to those acts that manifest a person's offence towards 'iman (faith) and any act rejecting God. The main problems that need to be addressed in this research, are not so much to question whether the relevant verses that are cited are salient to the topic discussed, but more so, it is the different interpretations of the text that is the main issue. The different understanding of the same verse can sometimes raise concern, when the interpretations oppose each other.

The human nature of *kuf*r becomes more evident when observing conduct undertaken by a person during times of stress. In the Qur'anic verses quoted by Izutsu, the *KFR* root presents the intensified form *kafur*. This, he claims, is what al-Baidawi suggests as an intensified form of *kuf*r, denoting the characteristic of someone who easily forgets all the benefits they have been privileged to enjoyed, but maintains in their memory any pain they have suffered and received.

Your Lord it is who drives the ships for you in the sea so that you may seek after His bounty. So merciful is He towards you. Moreover, when some affliction befalls you in the sea, those whom you call upon usually (i.e. the idols) forsake you, leaving Him alone. But when He brings you safe to shore, you turn away. Man is indeed an ingrate (*kafur*). [17:69].<sup>348</sup>

He furthers this point with two other verses, from 42:47 and 29:65-66 :

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<sup>348</sup> Ibid., p115, Qur'an, 17:69



So long as We let man taste of mercy from Us, he is very glad thereof. But the moment some evil befalls him because of that which his own hands have done, he shows himself to be an ingrate (*kafir*). [42:47].

When they ride in the ships they pray to God, holding out their religion sincerely to Him alone. But as soon as He has brought them safe to shore, behold, they return to polytheism, thus to act ungratefully (*yakfru*, a verbal form from *kuf*) for what We (the subject here changes abruptly to the first person) have given them (i.e. Our favours) and betake themselves to merry-making. [29: 65-66]<sup>349</sup>

Within the Qur'an there is a somewhat detailed list of God's favours, in 16:3-18. The favours are referred to as 'signs,' *ayat*, (plural of *ayah*).<sup>350</sup> The word *ayat* is also used to mean 'verses' of the Qur'an. Izutsu suggests these verses continue to state that, in spite of God's good will and benevolence, most humans maintain a rejection of the grateful dutiful return. He then uses 14:37 to emphasis that humans are informed that they are consistantly 'unfair' and 'wrongful' (*zalum*), due to this attitude of *kuf* in replying to God's gifts, which implies this is the act of a *kafir* :

God it is who created the heavens and the earth and sent down from heaven water, and produced therewith fruits as a provision for you. And He subjected to you the ships to run upon the sea as He commands. And He subjected to you the rivers. And He subjected to you the sun and the moon to run their fixed courses.

And He subjected to you the night and the day. Yea, He gave you of all you asked Him. If you count God's favours you will never number them. Verily, man is too unfair, too ungrateful (*kaffar*, emphatic form of *kafir*).<sup>351</sup>

Mohammad Hashim Kamali, in his work *Freedom of Expression in Islam*, expresses the wide understanding of *Kuf* in the juristic literature. He states that the literature covering *Kuf* is primarily concerned with what does and does not relate to the act of *Kuf*. He argues that *Kuf* as a term used is "a broad term which comprises almost every variety of disbelief, polytheism (*shirk*), blasphemy and apostasy."<sup>352</sup> He also mentions that in the Qur'an, the Sunnah and the juristic work of the '*ulama*', the

<sup>349</sup> Ibid., p116. Relating to the latter verse, Izutsu also refers to the Qur'anic verses 30:33 and 16:55-57

<sup>350</sup> Ibid., p116.

<sup>351</sup> Ibid., p116, Qur'an, 14:37 This verse 14:37 is actually quoted as 14:32-34 by Mohammad Asad, op. cit., p377-378 and also by Abdullah Yusuf Ali, op. cit., Vol. II, p629-630 and also by Maulana Abdul Majid Daryabadi, op. cit., Vol. II, p428-430 and by Ali, Maulvi Mohammad, 1920, *The Holy Qur'an : Containing the Arabic Text With English Translation and Commentary*, Ahmadiyya Anjuman-I-Ishaat-I-Islam, Lahore, India, p518-519

<sup>352</sup> Kamali, Mohammad Hashim, *Freedom of Expression in Islam*, 1997, Islamic Texts Society, Cambridge, UK, p218-219. Also see O'Sullivan, Declan, 'Taliban Destroy the Buddha Statues in Afghanistan' op.cit., p46

concept of *Kufr* has two different meanings. There is the greater *Kufr*, *al-kufr al-akbar*, which is the explicit, undeniable renunciation of faith and there is the lesser *Kufr*, *al-kufr dun al-kufr*, which is very similar to the greater form, but of less significance. The lesser form does not include blatant disbelief, but is used more as a metaphorical phrase to emphasise the gravity of such behaviour that leads to transgression (*fisq*).<sup>353</sup> As mentioned above, it is of interest to note that *Kufr* is often used in a generic manner, relating to other acts that are not necessarily some form of disbelief. Kamali raises the issue that :

Readers who are familiar with the sectarian literature of Islam will also note the somewhat facile manner in which accusations of *kufr* were made by the different sects and factions against one another, so much so that it often becomes difficult to distinguish between the greater and the lesser *kufr*. Thus, it is not always easy to differentiate the infidel (*kafir*) from the transgressor (*fasiq*) or from the hypocrite (*munafiq*) respectively.<sup>354</sup>

He also quotes from a chapter entitled 'Who is an Infidel and who is not?' from the work *Al-Fisal fi'l-Milal wa'l-Ahwa' wa'l-Nihal* of Ibn Hazm, where the opening comments of the chapter read as:

There is disagreement on the question of what amounts to disbelief and what exactly distinguishes belief from disbelief. There are groups and sects, on the one hand, who maintain that anyone who rejects their own respective views and doctrines on the articles of the faith becomes a *kafir*.....others have held that rejection of their own doctrines by their own opponents amounts to *kufr* only in regard to the attributes of God but that it amounts to transgression (*fisq*) in all other areas. According to yet another view : a Muslim may not be charged with *kufr* or *fisq* for an opinion regarding either dogmatic or juridical issues (*i'tiqad aw fatwa*); and opinions of this kind may (in fact) consist of *ijtihad* which merits a reward.<sup>355</sup>

Having focused on *kufr*, which includes *kafir*, and how they both appear in the Qur'an, it is now important to focus on the definition of *kafir* in order to identify its meaning in the Islamic juristic literature.

<sup>353</sup> Kamali, Mohammad Hashim, *Freedom of Expression in Islam*, ibid., p219. Also see Al-Bahnasawi, Salim, *al-Hukm wa Qadiyyat Takfir al-Muslim*, third edition, Dar al-Buhuth al-'Ilmiyyah, Kuwait, 1405/1985, p62 (Kamali, ibid, in footnote 151 on p256). Also see O'Sullivan, Declan, 'Taliban Destroy the Buddha Statues in Afghanistan' ibid., p46

<sup>354</sup> Kamali, Mohammad Hashim, *Freedom of Expression in Islam*, ibid., p219.

<sup>355</sup> Ibid., p219. Also see : Ibn Hazm, Muhammad 'Ali b. Ahmad b. Sa'id al-Zahiri, *Al-Fisal fi'l-Milal wa'l-Ahwa' wa'l-Nihal*, Maktabat al-Salam al-'Alamiyyah, Cairo, no date given, Vol.II, p137-138



### 2.3 kafir (كافر)

‘ “The coverer.” One who hides or covers up the truth.” ’<sup>356</sup> “He who conceals by covering.”<sup>357</sup> The use of this term is considered to have developed its meaning from originally referring to acts of “obliterating, covering” information, to then relate, more specifically, to “concealing benefits received.” This was seen as an “ungrateful” behaviour. *kafir* is a term which appears in its singular form, but also in the plural forms of *kafirun*, *kuffar*, *kafarah* and *kifar*. The latter, *kifar*, represents “one who refuses to see the truth; an infidel” who rejects any acceptance of the Divine revelation and is completely ungrateful to Allah, thus is seen as an atheist.<sup>358</sup>

In this context, the term appears in the Qur’an in a *Sura* which focuses on the attention of such disbelief; *Sura* 16:57, “concealing Allah’s blessings”, which is very applicable to the act of being deliberately “ungrateful to Allah.” A similar reference is also found in *Sura* 30:33.<sup>359</sup> The term also appears in the *Qur’an*, in *Sura* 2: 37 as “Those who disbelieve [*wa’llazina kafaru*] and call our signs lies, they are the fellows of the Fire, they shall dwell within for ever.”<sup>360</sup>

The term is especially used against those who believe in the divinity of the character of Jesus as the Holy Trinity. Such believers are referred to as being infidels in *Sura* 5: 76,

They indeed are infidels [*la-qad kafara ‘llazina*] who say Allah is *al-masih* *ibn Maryam*....verily him who associates anything with Allah hath Allah forbidden [*sic*] Paradise and his resort in the Fire.<sup>361</sup>

Added to this belief system, *Sura* 5: 77 is translated as

‘They are infidel who say verily God is the third of three’ [on this passage the kamalan say it refers to the Nestorians and to the Malaka’yah, who believe that Allah is one of three, the other two being the mother and son.]<sup>362</sup>

<sup>356</sup> Thomas P. Hughes, *Dictionary of Islam*, op. cit., p259

<sup>357</sup> Cyril Glasse, *The Concise Encyclopaedia of Islam*, op. cit., p216

<sup>358</sup> Ibid., p216. Also see *The Encyclopaedia of Islam*, Volume IV, op. cit., p407

<sup>359</sup> *The Encyclopaedia of Islam*, Volume IV, Ibid., p407

<sup>360</sup> *Dictionary of Islam*, op. cit., p260

<sup>361</sup> Ibid., p260

<sup>362</sup> Ibid., p260

This translation suggests a slight misinterpretation of the Christain belief system of the Trinity, but it must be noted that this has been very well recorded by Ali Mohammad in his own *tafsir* explanation of this specific *ayah* and how it refers to the characters of Mary and Jesus.

Within the *raddu 'l-muhtar* five specific forms of *kafir*, or infidels, are stated and categorised into the different identifiable groups of differing approaches which manifest themselves as unbelief by *kufr*. The branches describe [i] Those who do not believe in the 'Great First Cause'; [ii] Those who disbelieve the Unity of Allah [*tawhid*] which includes the Sanawiyah who were devoted to the two elements of the eternal principles, 'Light' and 'Darkness'; [iii] Those who believe in the Unity of Allah, but simultaneously refuse to accept the revelation; [iv] Those who are idolaters; [v] Those who believe in the Unity of Allah together with the revelation, but do not accept the mission of the Prophet Mohammed and its influence for the world's population. This includes the *ahl al-kitab*, [the People of the Book], as in the Christians and believers of Judaism.<sup>363</sup>

The issue involving this disbelief of the mission, is argued to be actually stated in the *Qur'an*, in *Sura 34 : 33*, where it declares : "we do not believe in your mission."<sup>364</sup> The term *kafir* was used towards the unbelievers in Mecca, who were seen as a group who positively endeavoured to refute and revile the Prophet Mohammed. It is also related to within the 50:2. During the Meccan period, there was a practice of allowing patience to proffer enough time for the unbelievers to find the real truth and change their faith and lifestyles. It is argued that this approach is recommended in the *Qur'an*, in verses 86:17; 73:10 and in 109:1-6 which, in itself, is actually entitled '*al-kafirun*.'<sup>365</sup> *Al-kafirun* states:

قُلْ يَا أَيُّهَا الْكَافِرُونَ  
لَا أَعْبُدُ مَا تَعْبُدُونَ  
وَلَا أَنْتُمْ عَابِدُونَ مَا أَعْبُدُ

<sup>363</sup> *raddu 'l-muhtar* Vol. iii, p442 which is quoted in *Ibid.*, p260, also see *The Encyclopaedia of Islam*, Volume IV, op. cit., p407

<sup>364</sup> *The Encyclopaedia of Islam*, Volume IV, *Ibid.*, p407

<sup>365</sup> *Ibid.*, p407



وَلَا أَنَا عَابِدٌ مَّا عَبَدْتُمْ  
وَلَا أَنْتُمْ عَابِدُونَ مَّا أَعْبُدُ  
لَكُمْ دِينُكُمْ وَلِيَ دِينِ

Say : O unbelievers! I do not serve that which you serve, Nor do you serve Him whom I serve; Nor am I going to serve that which you serve, Nor are you going to serve Him who I serve : You shall have your recompense and I shall have my recompense.<sup>366</sup>

At a later stage, Muslims were equally encouraged to isolate themselves from such disbelievers, as stated in *Sura 3 : 114*, to defend themselves from attacks by the offending groups and also, to even initiate such attacks against the disbelievers, to defend their security. These recommendations are also quoted from the Qur'an in *Sura 2 : 186*.<sup>367</sup>

There is a fascinating statement on the Islamic interpretation of human existence, quoted from Saiyid Sharif Jurjani's work *sharhu 'l-muwaqif*, which manifests the perception of those who interpret the existence of humans as divided into two very different groups - believers and unbelievers :

Mankind are divided into two parties, namely those who acknowledge the mission of Muhammad, or those who do not believe in it. Those who do not believe in his mission are either those who reject it and yet believe in the inspiration and divine mission of other prophets, as the Jews or Christians and also the *majusi* [Fire Worshippers] ; or those who do not believe in any revelation of God's will. Those who do not believe in any revelation from God are either those who acknowledge the existence of God, as the *Brahma* (Buddists?) [sic], or those who deny the existence of a Supreme Ruler, as the *Dahri*<sup>368</sup>, or atheist. Those who do not acknowledge Muhammad as an inspired prophet are either those who do it

<sup>366</sup> "The word *din* signifies *recompense* or *reward*. It is a prophecy that those who serve Allah shall have a goodly reward from Him, while those who serve idols shall not obtain any help from their false gods.....Those who think that these words indicate that the Holy Prophet had despaired of the unbelievers and left them to their religion are mistaken. Not for a single moment did he cease to invite the unbelievers to Islam and to forsake the worship of the idols." Ali, Maulvi Mohammad, 1920, *The Holy Qur'an*, op. cit., footnote 2810, p1230.

<sup>367</sup> Ibid., p407

<sup>368</sup> *Dahri* : This word derives from the Arabic *ad-dahr* [time]. It is a traditional term for an atheist or materialist. It appears in the *Qur'an* on *Sura 45:23-24*, "Have you seen him who has taken his caprice to be his god?.....They say "There is nothing but our present life; we die and we live and nothing but Time [*ad-dahr*] destroys us," *The Concise Encyclopaedia of Islam*, op. cit., p91

wilfully and from mere enmity, or those who do not acknowledge it from reflection and due study of the subject. For the former is eternal punishment and for the latter that punishment which is not eternal. There are also those who, whilst they are Muslims, are not orthodox in their belief; these are heretics, but they are not *kafirs*. Those who are orthodox are *an-Naji* or the salvations.<sup>369</sup>

The issue of *kafir* is raised on many occasions throughout the Traditional literature and *ahadith*, which deal with the fate of an accused or convicted *kafir* on the Day of Judgement, with forthcoming punishment in Hell. Al-Bukhari's *ahadith* concerns the issue which was considered a controversial argument in early Islam - whether a Muslim should be held as a *kafir* when committing a 'major sin.' Within the different *madhhab*, there is a differing understanding, within each *fiqh*, concerning the approach towards *kafir*, which expands between tolerance to a strict view. All these views are based on the *Qur'an's* Sura 9:28, stating that the unbeliever is unclean. Abu Zakariya Yahya b. Sharaf al-Din al-Nawawi is lenient in his approach, stating that believers and unbelievers are both equal in the regards of purity. The *ahl al-kitab* are, obviously, more accepted than others seen as *kuffar*, as they are within the category of *dhimma*.<sup>370</sup> Those considered as the unbelievers proper, entitled as the *kafirun asliyyun* or *mushrikun*<sup>371</sup> can only expect death or slavery if they are caught as prisoners of war in the hands of Muslims.

Toshihiko Izutsu argues that, through time, there has gradually been, in many cases, a potentially indiscernible shift of emphasis, through a change in interests. Therefore, this 'shift of emphasis' developed a somewhat subjective approach to the

<sup>369</sup> Saiyid Sharif Jurjani *sharhu 'l-muwaqif*, p597, also see *Dictionary of Islam*, op. cit., p260

<sup>370</sup> "Dhimmi : Free non-Muslim subjects living in Muslim lands, who, in return for capital tax (*jizya*) payment, enjoy protection and safety." Kamali, Mohammad Hashim, *Ibid.*, p317 Also, Majid Khadduri offers a fascinating definition of *dhimmi*. He quotes Ya'qub ibn Ibrahim al-Ansari Abu Yusuf from his work *Kitab al-Kharaj*. The tolerated communities within the Islam included not only the so-called *ahl al-kitab* (people of the Book) or Scripturaries, but also idolaters ( '*abadat al-asnam* ) and fire worshippers, provided they have accepted residence in any Muslim territory except the Arabian Peninsula. The *ahl al-kitab* (people of the Book) or Scripturaries, include Christians, Jews, Magians (Zoroastrians), Samaritans and Sabians. Polytheists ( *mushrikun* ) were, as a rule, denied access to the status of *dhimmi*, particularly within Arabia as 'they had to chose between Islam and the sword.' Khadduri, Majid, 1955, *War and Peace in the Law of Islam*, The John Hopkins Press, Baltimore, USA, p176. Khadduri also cites Abu Yusuf, Ya'qub ibn Ibrahim al-Ansari, *Kitab al-Kharaj*, Cairo, 1352AH, pp128-129

<sup>371</sup> See below for a detailed description, under the word *shirk* [association].



understanding of individual words and the words related to it.<sup>372</sup> To acknowledge this point, Izutsu offers the example of the conceptual-pair of the words *muslim* and *kafir* (infidel) which stand, unequivocally, diametrically opposed to each other.

He argues that in the pre-Islamic age, these two important Qur'anic words had no vital connection at all. Both words were in use, but had no essential link and no religious connotations in their usage. The word *muslim* was used to mean "a man who hands over something precious to another who demands it from him" and he defines *kafir* as "a man who does not show gratitude to his benefactor."<sup>373</sup> It was during the stage of development, within the Qur'anic system that the two words gained their connection, placed in opposition. He argues that the Qur'an places the words in a certain semantic field within the sphere of *iman* (belief.)

In the area of 'belief', he argues that the word *kafir* (which he implies has the corresponding nominal form of *kufir*) is placed in opposition to *iman* (faith) and *islam* (which he implies has the corresponding nominal form of *muslim*) is placed complementary with *iman*. Within the Qur'an the emphasis is predominantly placed on the opposition of *iman* / *islam* and *kufir*. He defends this point, as being due to the consequential circumstances in the earliest time of the Prophet's establishment of Islam. As a 'new religion' the small group of initial followers engaged in trying to persuade the unbelievers to understand and accept Islam, but who were refusing to acknowledge the *iman* (faith). "It was literally a war between *islam* and *kufir*, between 'Muslims' and '*kafirs*.'"<sup>374</sup> He argues that only in a very important verse of the Qur'an, in 49:14-15, the word *islam* stands in overt contrast to *iman*. The two are, in these verses, clearly and consciously distinguished between each other :

قَالَتِ الْأَعْرَابُ آمَنَّا قُلْ لَمْ تُؤْمِنُوا وَلَكِنْ قُولُوا أَسْلَمْنَا وَلَمَّا يَدْخُلِ الْإِيمَانُ  
فِي قُلُوبِكُمْ وَإِنْ تُطِيعُوا اللَّهَ وَرَسُولَهُ لَا يَلِتْكُمْ مِنْ أَعْمَالِكُمْ شَيْئًا إِنَّ اللَّهَ  
فُورٌ رَحِيمٌ

<sup>372</sup> Izutsu, Toshihiko, *God and Man in the Koran : Semantics of the Koranic Weltanschauung*, 1987, Ayer Company Publishers Inc., Salem, USA, (reprint of 1964, Keio Institute of Philological Studies, Tokyo, Japan,) Vol. V, p52

<sup>373</sup> Izutsu, Toshihiko, *God and Man*, Ibid., p52

<sup>374</sup> Ibid., p53

The Bedouins say : ‘We believe [*iman*].’ Tell them : ‘You do not believe yet [*iman*].’ You should say rather, ‘We have surrendered [*islam*]<sup>375</sup>, for the belief [*iman*] (in the true sense of the word) has not yet permeated your hearts.’ [*Al Hujurat*, 49:14-15]<sup>376</sup>

Izutsu suggests that this is a remarkable statement, as in this context *islam* is defined in the clearest manner as being the necessary initial step towards *iman*. However, he points out that it is also important to be aware that this definition of *islam* was expressed deliberately towards the Bedouins, due to their attitude of reluctance towards any commitment within Islam. This reluctance of the Bedouins is also raised within *ahadith*. He also states that, when relating to devout Muslims generally, the Qur’an does not make such a definite distinction. In this context *islam* is not seen as a form of ‘faith’ but as a spiritual act of complete surrender to Divine Will and is perceived to the supreme religious value.

Izutsu furthers this point by mentioning that, in normal use, the two words *muslim* “a man of *islam*” and *mu’min* “a man of *iman*” are interchangeable. They are both used to refer to an individual who has chosen the straight path of Divine Guidance (*huda*), having then removed themselves from the inevitable punishment in Hell.<sup>377</sup>

A word strongly related to *kufr* and a *kafir* is that of *shirk*.

## 2.4 Al-Shirk (الشرك)

*Shirk*, on a basic level, can be translated as “association.”<sup>378</sup> It relates to an individual who associates something with God, beyond accepting God’s unity (*tawhid*) and completeness in an absolute Divinity. The act of associating the worship of other gods with God is perceived to be the fundamental error, upon which every sin or transgression is based on. Nothing else, therefore, can be added to Allah, hence, nothing can be taken away. Associating artefacts or beliefs alongside Allah is considered the ultimate sin and it is argued that it is :

<sup>375</sup> “Or, ‘We have become Muslims (formally),” Izutsu, Toshihiko, *God and Man*, op. cit., footnote 23, p53

<sup>376</sup> Izutsu, Toshihiko, *God and Man*, Ibid., p53

<sup>377</sup> Ibid., p53-54

<sup>378</sup> *The Concise Encyclopaedia of Islam*, op. cit., p370. Also see O’Sullivan, Declan, ‘Taliban Destroy the Buddha Statues in Afghanistan’ op.cit., p46



the *only* sin that God cannot forgive, because it denies Himself and prevents forgiveness : ‘God forgives not that aught should be with Him associated, less than that He forgives to whomsoever he will. Whoso associates with God anything, has gone astray into far error.’ [4: 116]<sup>379</sup>

[italics in original text ].

T. B Irving links *Shirk* (الشرك) with the belief in Christianity of the ‘Trinity,’ together with the belief of ‘dualism,’ the latter of which covers the meanings of *zindiq*, in the crime of *zandaqah*,<sup>380</sup> which be addressed in more detail, below. In defining *Shirk*, Irving states that :

*Shirk*, or ‘association,’ which means giving God a partner of any sort, so that we no longer trust in Him Alone. Christian translators of the Qur’an often call this ‘polytheism’ or ‘idolatry,’ hoping thereby to divert criticism from themselves, although the trinity [*sic*] can be considered a variation on this theme, as can the dualism of the ancient Persians, and the cruder forms of paganism.<sup>381</sup>

*Shirk* can be defined, on a very basic level, as ‘polytheism,’ which is the worship of other things along with Allah. It also includes the attribution of ‘divine’ nature to these other objects, either a living creature or plant, or a planet or an inanimate object. However, it particularly implies associating some partnership with one, or more of these objects with having an equal status of worship, as that held in God. It also relates to the belief of those who feel that “the source of power, harm or blessings is from others besides Allah.”<sup>382</sup>

<sup>379</sup> Ibid., p370.

<sup>380</sup> *zindiq* is defined as “Anyone who, professing to be a Muslim, is really an unbeliever, or anyone who belongs to no religion,” *The Encyclopaedia of Islam*, Volume IV, 1978, p771. Also, the concept of heresy (*zandaqah*) within Islam is parallel to blasphemy, as both are covered in literature covering disbelief (*kufr*). In a general reference to heresy it relates to those who are considered as atheists (*zanadiqah*; single as *zindiq*). Thus, *zanadiqah* are those who outwardly proclaim their belief in Islam, but who actually – similar to the behaviour of the ‘hypocrites’ (*munafiqun*) during the life time of the Prophet Mohammad – hide their inner disbelief, while spreading the faith along with genuine devout believers. Kamali, Mohammad Hashim, op.cit., UK, p221, p330 also see al-Zuhayli, Wahbah, *al-Fiqh al-Islami wa Adillatuhu*, 8 vols., third edition, Dar al-Fikr, Damascus, 1409AH/1989AD, vol VI, p184

<sup>381</sup> Irving, T. B., *Islam and Social Responsibility*, op.cit, p6. Also see Ahmad, Khurshid, *Islam : Its Meaning and Message*, op.cit, p103-104. Also see O’Sullivan, Declan, ‘Taliban Destroy the Buddha Statues in Afghanistan’ op.cit., p47

<sup>382</sup> Az-Zubaidi, Al-Imam Zain-ud-Din Ahmad bin Abdul-Lateef, *The Translation of the Meanings of Summarized Sahih Al-Bukhari, Arabic-English*, translated by Khan, Muhammad Muhsin, 1994, Maktaba Dar-us-Salam Publications, Riyadh, Saudi Arabia, p1074

Syed Habibul Haq Nadvi also suggests that the Prophet himself emphasised on the gravity of the crime of murder, or the killing of a person with intention<sup>383</sup>, with “repeated warning that this crime is next to polytheism (*shirk*). He warned the believers in the following words : ‘The greatest sins are to associate something or someone with Allah and to kill human beings.’ ”<sup>384</sup>

The sin itself, of *shirk*, is the name used when referring to paganism and polytheism, and has been defined also as “Idolatry, paganism, polytheism. Ascribing plurality to the Deity.”<sup>385</sup> Pagans are labelled in plural as *mushrikun* (single as *mushrik* – المشرک – ‘those who associate’) and it is also considered as atheism in this context. *Shirk* is the complete opposite of surrender [*Islam*] to Allah, as a rejection and non-acceptance of this recognition. Islam is based on the knowledge of the believer, which is manifested by stating the *shahadah*.<sup>386</sup> The word *shahadah* derives from the verb *shahida*, “to observe,” “to witness,” “to testify,” “a perceiving,” “a testification.” It is the First of the Five Pillars in Islam, and is considered the most important Pillar - and element - of Islamic belief, based on the Prophet’s announcement that “I have brought nothing more important than the *shahadah*.” There are two statements within it, thus entitled the *shahadatun*, and is spoken by devout Muslims to express their unquestionable belief of the truth : “*ashhadu an la ilaha illa-Llah, wa ashadu anna Muhammadan rasulu-Llah* ” ( أَشْهَدُ أَنْ لَا إِلَهَ إِلَّا اللَّهُ وَأَشْهَدُ أَنَّ مُحَمَّدًا رَسُولُ اللَّهِ )

[I perceive (and bear witness) that there is no god but Allah and I perceive (and bear witness) that Muhammad is the Messenger of Allah].<sup>387</sup>

A reference on the respect of the use of the *shahadah* is mentioned by Mohammad Ibn Ishaq, within his *sirat rasul Allah* :

<sup>383</sup> The legal position on this crime, through *Qisas* (القصاص), is covered in detail in the following Chapter.

<sup>384</sup> Nadvi, Syed Habibul Haq, *Islamic Legal Philosophy and the Qur’anic Origins of the Islamic Law (A Legal-Historical Approach)*, 1989, Academia, The Centre for Islamic, Near and Middle Eastern Studies, Planning & Publication, Durban, South Africa, p84

<sup>385</sup> *Dictionary of Islam*, op. cit., p579

<sup>386</sup> *The Concise Encyclopaedia of Islam*, op. cit., p370

<sup>387</sup> Ibid., p359. It is also relevant to be aware that “The rules of euphony in Arabic elide the *nun* into the following *lam* and *ra* ; thus, this is correctly pronounced as ‘*ashhadu al-la ilaha illa-Llah, wa ashha-du anna Muhammadar-rasulu-Llah*.’ Ibid., p359. Also see O’Sullivan, Declan, ‘Taliban Destroy the Buddha Statues in Afghanistan’ op.cit., p48



The raid of Ghalib b. ‘Abdullah al-Kalbi, the kalb of Layth, was on the country of B. Murra in which he slew Mirdas b. Nahik, an ally of theirs from al-Hurqa of Juhayna. Usama b. Zayd and a man of the Ansar killed him (908). Usama b. Zayd said : ‘when I and a man of the Ansar overtook him and attacked him with our weapons he pronounced the *shahadah*, but we did not stay our hands and killed him. When he we came to the apostle we told him what had happened and he said ‘who will absolve you, Usama, from ignoring the confession of faith?’ I told him that the man had pronounced the words merely to escape death; but he repeated his question and continued to do so until I wished that I had not been a Muslim heretofore and had only become one that day and that I had not killed the man. I asked him to forgive me and promised that I would never kill a man who pronounced the *shahadah*. He said ‘You will say it after me (after the Prophet’s death), Usama?’ and I said I would.<sup>388</sup>

Thomas P. Hughes, in the *Dictionary of Islam*, has quoted from Wahhabi writers covering their definition of *shirk* into four separate types<sup>389</sup>:

*shirk ‘l-’ilm* is ascribing knowledge to others, rather than Allah. It includes the belief in soothsayers, astrologers and saints and is considered to be very much a part of Polytheism. “All who pretend to have knowledge of hidden things, such as fortune tellers, soothsayers and interpreters of dreams, as well as those who profess to be inspired, are all liars.”

The second form is *shirk ‘t-tasarruf* is ascribing power to others rather than Allah. Thus, “But they who take others beside Him as lords, saying ‘we only serve them that they might bring us near Allah.’ Allah will judge between them (and the Faithful) concerning that wherein they are at variance. [Sura 39 : 4]”

The third form is *shirk ‘l-’ibadah*, which concerns offering worship to created things. This includes worshipping in front of shrines of saints, “prostration, bowing down, standing with folded arms, spending money in the name of an individual, fasting out of respect for his memory, proceeding to a distant shrine in a pilgrim’s garb and calling out the name of a saint.” It is also wrong “to cover the grave with a sheet, to

<sup>388</sup> Guillaume, A., 1955, *The Life of Mohammad : A Translation of Ishaq’s Sirat Rasul Allah*, p667, Oxford University Press, London. Also see Ahmad, Hazrat Mirza Tahir, *Murder in the Name of Allah*, op. cit., p61. Also see O’Sullivan, Declan, ‘Taliban Destroy the Buddha Statues in Afghanistan’ *ibid.*, p48

<sup>389</sup> All quotations concerning the four types of *shirk* as described here, are taken from Thomas P. Hughes, *Dictionary of Islam*, op. cit., p579-580

say prayers at the shrine, to kiss any particular stone, to rub the mouth and breast against the walls of the shrine.” This is an extremely strict condemnation of what are common, regular practices involved when visiting tombs of saints - and also includes acts that occur during the *hajj* at the Mosque in Mecca. All these acts are considered, thus entitled, *ishrak fi ‘l-’ibadah* [association in worship].

The fourth form is *shirk ‘l-’ibah*, which refers to the performance of ceremonies which imply reliance on other things for support, rather than Allah. This includes what are considered superstitious customs, such as the *istikharah*, seeking guidance from the use of beads, together with utilising trust in omens or believing in ‘lucky’ and ‘unlucky’ days. This form of *shirk* also rejects the adoption of names such as ‘Abdu ‘n-Nabi [the Slave of the Prophet]. Also, to swear by the name of the Prophet, of ‘Ali, of the Imams or of Pirs [leaders], is to give them the accolade and respectful plateau of honour, which should only be proffered to Allah alone. This act is deemed as *ishrak fi ‘l-adab* [“*shirk* in association”].

There is a minor difference between the four forms of *shirk*, the first one, *shirk ‘l-’ilm*, is dealing with belief - as in accepting the information from soothsayers or astrologers. The fourth form, *shirk ‘l-’ibah*, is more to do with habits, and consulting them for advice or inspiration.<sup>390</sup>

In another, more specific analysis of the term, there are three main types of *shirk* that can be categorised as :

- 1 *Ash-Shirk-al-Akbar*, i.e. major *shirk*
- 2 *Ash-Shirk-al-Asghar*, i.e. minor *shirk*
- 3 *Ash-Shirk-al-Khafi*, i.e. inconspicuous *shirk*.<sup>391</sup>

Within these categories, the first form, *Ash-Shirk-al-Akbar*, also divides into four subsection which portrays, in a more accurate manner, the differing array of such acts that hold certain aspects which relate to *Shirk*. The first sub-division of the major *Shirk*, is *Shirk-ad-Du’a* or ‘invocation.’ This form of *Shirk* involves the act of

<sup>390</sup> Thomas P. Hughes, *Dictionary of Islam*, op. cit., p579-580 All quotations concerning the four types of *shirk* as described here are from these pages.



invoking, supplicating or praying to other objects deemed as 'deities,' other than Allah. This form of *Shirk* is related to the Qur'anic 29:65, which reads as :

When the unbelievers embark on a ship, they call on God in His Compassion to protect them : in all sincerity they vow obedience if only He will bring them safely to the shore. But once they are home and dry, and God has placed them safely on firm ground, they begin once again to associate partners with him. (29:65)<sup>392</sup>

It is important to point out that this particular translation of the Qur'an, also includes the *tafsir* (exegesis) within the text, as opposed to solely a translation alone from the Arabic text. It is also necessary to note that this is a translation with a Shi'a *tafsir* and not a Sunni hermeneutic interpretation of the Qur'an.

The second sub-division is that of *Shirk-al-Niyyah wal-Iradah wal-Qasd*. This form of *Shirk* relates to acts of intention, undertaken with a purpose and with some determination, during either worship or other religious deeds. The worship or the deeds are presented as not directed towards solely to Allah, but to the other objects that are, again, seen to be the 'deities.' This form of *Shirk* is related to both of the Qur'anic verses 11:15-16, which read as :

Whoever desires the life of this world and hankers after its glitter and its glory will find that We reward their good deeds fully while they are on earth. They are the ones who will have nothing in the world to come but the flames of Hellfire! The rewards they have received for good deeds carried out while on earth will be taken from them; those deeds will have been worthless.(11:15-16)<sup>393</sup>

The third form of the sub-divisions is that of *Shirk-al-Ta'a*, which covers certain aspects that include acts such as someone rendering full obedience to any other authority, rather than God alone. Acts of *Shirk-al-Ta'a* relate to the understanding that Jews and Christians who, in a certain manner, worshipped rabbis and monks respectively, instead of treating them in the role as religious figures, they were seen to

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<sup>391</sup> Az-Zubaidi, Al-Imam Zain-ud-Din Ahmad bin Abdul-Lateef, op.cit., p1074. Also see O'Sullivan, Declan, 'Taliban Destroy the Buddha Statues in Afghanistan' op.cit., p50

<sup>392</sup> Surah *Al-Ankabut*, 29, verse 66, in Turner, Colin P., *The Quran : A New Interpretation*, (Textual Exegesis by Muhammad Baqir Behbudi), 1997, Curzon Press, Richmond, Surrey, UK, p241. The verse is cited as 65 in Az-Zubaidi, Al-Imam Zain-ud-Din Ahmad bin Abdul-Lateef, ibid., p1074

<sup>393</sup> Surah *Al-Hud*, 11, verses 16 and 17, in Turner, Colin, *The Quran : A New Interpretation*, ibid., p127. The verses are cited as 15 and 16 in Az-Zubaidi, Al-Imam Zain-ud-Din Ahmad bin Abdul-Lateef, ibid., p1074

be held in a much higher status than that. This form also includes the belief of worshipping the 'Trinity,' as placing God in two other forms, as a 'son' and a 'spirit.'

This is mentioned in the Qur'anic verse 9:31, which read as :

The original crime of the Jews and the Christians was that they Conferred on their rabbis and their popes a status akin to that of God Himself; they preferred the teachings of their false leaders to the commands of the Lord and obeyed them rather than Him. They believed that Christ was more than human and they worshipped the Holy Spirit, even though God had commanded them to worship only him, the One true God. Exalted is He, far above their association of other gods with him.(9:31)<sup>394</sup>

This verse is also worded with added explanations to the translation, as :

All-Mighty Allah says :They (Jews and Christians) took their rabbis and their monks to be their lords besides Allah (by obeying them in things which they made lawful or unlawful according to their own desires without being ordered by Allah), and (they also took as their lord) Messiah, son of Maryam (Mary), while they (Jews and Christians) were commanded (in the Torah and the Gospel) to worship none but One *Ilah* (God - Allah), *La ilaha illa Huwa* (none has the right to be worshipped but He). Praise and glory be to Him, (far above is He) from having the partners they associate (with Him).(9:31)<sup>395</sup>

This verse is connected to a *hadith* narrated by Ahmad, At-Tirmidhi and Ibn Jarir, cited within *Tafsir At-Tarabi*, which relates as :

Once, while Allah's Messenger was reciting the above Verse [*sic*], 'Adi bin Hatim said, 'O Allah's Prophet! They do not worship them (rabbis and monks).'' Allah's Messenger said 'They certainly do. They (i.e. rabbis and monks) made legal things illegal, and illegal things legal, and they (i.e. Jews and Christians) followed them; and by doing so they really worshiped them.'<sup>396</sup>

The fourth sub-division in this form of *Shirk*, is that of *Shirk-al-Mahabbah*, which implies that the presentation of love and devotion that should only be committed to God, is delivered to some other object of desire and worship. This mode of *Shirk* is referred to in the Qur'anic verse 2:165, which reads as :

<sup>394</sup> Surah *Al-Tawba*, 9, verse 31, in Turner, Colin, *The Quran : A New Interpretation*, ibid., p110. The verse is also cited as 31 in Az-Zubaidi, Al-Imam Zain-ud-Din Ahmad bin Abdul-Lateef, ibid., p1074-1075

<sup>395</sup> Surah *Al-Tawba*, 9, verse 31, Az-Zubaidi, Al-Imam Zain-ud-Din Ahmad bin Abdul-Lateef, ibid., p1074-1075. Also see O'Sullivan, Declan, 'Taliban Destroy the Buddha Statues in Afghanistan' op.cit., p52

<sup>396</sup> "Ahmad, At-Tirmidhi and Ibn Jarir, within *Tafsir At-Tarabi*, Vol. 10, p114" as cited by Az-Zubaidi, Al-Imam Zain-ud-Din Ahmad bin Abdul-Lateef, ibid., p1075



And of mankind are some who take (for worship) others besides Allah as rivals (to Allah). They love them as they love Allah. But those who believe, love Allah more (than anything else). If only, those who do wrong could see, when they will see the torment, that all power belongs to Allah and that Allah is Severe in punishment.(2:165)<sup>397</sup>

The second main category of the different types of *shirk* is *Ash-Shirk-al-Asghar*, which covers the area of acts deemed to be ‘minor *shirk*.’ This form covers acts that are deliberately performed by a person, to ‘show-off’ during their public display of worship or any other religious deed undertaken by them. This covers the basic act of a person’s desire to seek praise, some fame or even to the level of a ‘media-popular personality’ in reciprocation for their altruistic approach to their worship. This type of behaviour is referred to by the verse 18:110, which reads as :

Say (O Muhammad) : I am only a man like you. It has been inspired to me that your *Ilah* (God ) is One *Ilah* (God – i.e. Allah). So whoever hopes for the Meeting with his Lord, let him work righteousness and associate none as a partner in the worship of his Lord.(18:110)<sup>398</sup>

Finally, the third main category of the different types of *shirk* is *Ash-Shirk-al-Khafi*, which covers inconspicuous *shirk*. This title relates to believers who are “inwardly dissatisfied with the inevitable condition that has been ordained for one by Allah; conscientiously lamenting that had you done or not done such and such or had you approached such and such you would have had a better status, etc.”<sup>399</sup> This certain attitude in the form of *shirk*, is specifically referred to in a *hadith* (Tradition), which reports the Prophet Muhammad’s own position on this condition :

The Noble Prophet Muhammad said : ‘*Ash-Shirk-al-Khafi*, in the Muslim nation, is more inconspicuous than the creeping of black ant on black rock in the pitch-darkness of the night.’ And this inconspicuous *shirk* is expiated by saying thrice the following sentences within a day and a night : ‘O Allah! I take Your refuge from that I should ascribe anything as partner in Your worship, being conscious of that, and I beg Your pardon for that sin which I am unaware of.’<sup>400</sup>

<sup>397</sup> Surah *Al-Baqarah*, 2, verse 165, Az-Zubaidi, Al-Imam Zain-ud-Din Ahmad bin Abdul-Lateef, *ibid.*, p1075

<sup>398</sup> Surah *Al-Khaf*, 18, verse 110, Az-Zubaidi, Al-Imam Zain-ud-Din Ahmad bin Abdul-Lateef, *ibid.*, p1075

<sup>399</sup> Az-Zubaidi, Al-Imam Zain-ud-Din Ahmad bin Abdul-Lateef, *ibid.*, p1075

<sup>400</sup> *Ibid.*, p1075. Also see O’Sullivan, Declan, ‘Taliban Destroy the Buddha Statues in Afghanistan’ *op.cit.*, p53

### 2.4.1 *kufr* and Polytheism.

Both of the two recognised aspects of *kufr*, the ‘thanklessness’ and that of ‘disbelief,’ both obviously lead to denying the *tawhid*, or unquestionable Oneness of God. This has a strong connection, even an equal comparison with polytheism. Polytheism in ancient Arabia consisted in the worship of idols, and a :

number of minor deities that were called sometimes the sons and daughters of God, or more simply ‘companions’ or ‘associates’ of God. The most usual term for this kind of polytheism is *shirk*; and for the idolater *mushrik*, literally, ‘one who associates,’ that is, one who ascribes partners to God. Thus, we obtain two formulas of semantic equivalence in this province : *kufr* = *shirk* and *kafir* = *mushrik*.<sup>401</sup>

This point, raised by Izutsu, is a very good guide to illustrate the main theme of this thesis, which aims to identify the somewhat obfuscation and blurring of the boundaries that can be seen to occur between each defined category of ‘unbelief.’ The thesis aims to present the argument that there is no significant border separating one act from another. One term of ‘unbelief’ either equals another, or is broad enough to include other acts, which means that one act can fall within two, supposedly, separate categories. Izutsu cites some Qur’anic verses where *kufr* is referred to specifically as applying to ‘associating.’ The relevant verses are 6:1; 12:33 and 40:12, cited as :

Praise be to God who created the heavens and the earth, and put in order the darkness and the light. Yet those who are kafirs ascribe equals unto their Lord. (6:1)

They ascribe unto god associates (shuraka’ ). Say, Name them. Is it that you would tell Him what He knows not in the earth? Or are they but empty names? Nay, but their contrivance appears fair to those who are kafirs, and thus they are kept away from [God’s] way. (12:33)

Whenever God alone was invoked, you disbelieved (kafartum), but if others were associated [with Him], you believed. (40:12)<sup>402</sup>

The main use of the theme *shirk* can be found in the verse 6:100, as:

وَجَعَلُوا لِلَّهِ شُرَكَاءَ الْجِنَّ وَخَلَقَهُمْ وَخَرَقُوا لَهُ بَنِينَ وَبَنَاتٍ بِغَيْرِ عِلْمٍ سُبْحَانَهُ  
وَتَعَالَى عَمَّا يُصِفُونَ

<sup>401</sup> Izutsu, Toshihiko, op.cit., p126

<sup>402</sup> All three Qur’anic verses are cited from Izutsu, Ibid., p126



Yet they appoint the *jinn* as the associates [of God], though in reality they are but His creatures, and ascribe unto Him sons and daughters, without any knowledge. Glorified be He, and high be He exalted above what they attribute [unto Him]. (6:100)<sup>403</sup>

Dealing with the Qur'anic use of the word *mushrik*, Izutsu confirms that in 6:106, "the semantic content of the word *mushrik* is chiefly determined by two factors: (1) not following divine revelations, and (2) not acknowledging the absolute Oneness of God:

اتَّبِعْ مَا أُوحِيَ إِلَيْكَ مِنْ رَبِّكَ لَا إِلَهَ إِلَّا هُوَ وَأَعْرِضْ عَنِ الْمُشْرِكِينَ

Follow thou that is revealed to thee from thy Lord. There is no god but He. So turn away from the *mushrik*." (6:106)<sup>404</sup>

Thus, this verse enhances the concept of using and believing the *shahadah* and understanding the idea of *tawhid* (Oneness of God, through monotheism)

Toshihiko Izutsu states an interesting, but potentially polemic point, in that "from the standpoint of the thorough going monotheism of Muhammad, even the Christian doctrine of Trinity constitutes glaring idolatry. And so also the deification of Jesus Christ."<sup>405</sup>

He also cites two Qur'anic verses 5:76-77, that express the central tenets of Christianity as being unquestionable acts of the *kafirs*. He then explains that semantically, an understanding should be taken into consideration, that these verses belong within the category of *kufr* by being cases of *shirk*. This explanation appears explicitly within the text, as :

لَقَدْ كَفَرَ الَّذِينَ قَالُوا إِنَّ اللَّهَ هُوَ الْمَسِيحُ ابْنُ مَرْيَمَ وَقَالَ الْمَسِيحُ يَا بَنِي إِسْرَائِيلَ اعْبُدُوا اللَّهَ رَبِّي وَرَبَّكُمْ إِنَّهُ مَنْ يُشْرِكْ بِاللَّهِ فَقَدْ حَرَّمَ اللَّهُ عَلَيْهِ الْجَنَّةَ وَمَأْوَاهُ النَّارُ وَمَا لِلظَّالِمِينَ مِنْ أَنْصَارٍ

<sup>403</sup> Izutsu, Ibid., p127, Qur'an, 6:100

<sup>404</sup> Izutsu, Ibid., p127, Qur'an, 6:106

<sup>405</sup> Ibid., p127

لَقَدْ كَفَرَ الَّذِينَ قَالُوا إِنَّ اللَّهَ ثَالِثُ ثَلَاثَةٍ وَمَا مِنْ إِلَهٍ إِلَّا إِلَهُ وَاحِدٌ وَإِنْ لَمْ  
يَنْتَهُوا عَمَّا يَقُولُونَ لَيَمَسَّنَّ الَّذِينَ كَفَرُوا مِنْهُمْ عَذَابٌ أَلِيمٌ

They surely are *kafirs* who say, 'God is the Messiah, son of Mary.' For the Messiah [himself] said, 'O children of Israel, worship God, My Lord and your Lord. Verily, whosoever ascribes unto God associates, God shall surely declare Paradise forbidden unto him, and the Fire shall be his ultimate abode. The wrong-doers shall have none to help them.' They surely are *kafirs* who say, 'God is third of Three.' Nay, there is no god save One God. If they desist not from saying so, there shall befall those of them that commit such an act of *kufir* a painful chastisement. (5:76-77)<sup>406</sup>

Assessed again, from another perspective, it can be seen that *shirk* can be identified as nothing more and nothing less than forgery, in the context of 'forging against God a lie' (*iftira* 'ala[y] Allah al-kadhib), which is related to the moral value of *sidq* 'truthfulness.' Izutsu explains this connection, as obviously, both idolatry and polytheism involve creating, out of caprice, images and beings that are meaningless. As Izutsu points out, "via this route, too, *shirk* connects ultimately with *kufir*" and he highlights this view in 10:69, cited as :

قَالُوا اتَّخَذَ اللَّهُ وَلَدًا سُبْحَانَهُ هُوَ الْغَنِيُّ لَهُ مَا فِي السَّمَاوَاتِ وَمَا فِي الْأَرْضِ إِنَّ  
عِنْدَكُمْ مِّنْ سُلْطَانٍ بِهَذَا أَتَقُولُونَ عَلَى اللَّهِ مَا لَا تَعْلَمُونَ

They say, 'God has taken to Himself a son.' Glorified be He! He is Self-sufficient. His is all that is in the heavens and all that is in the earth. You have no authority for this. Will you say about God what you do not know? Tell them, 'Verily, those who forge against God a lie shall never end well.' .....We shall make them taste a harsh chastisement for that they were *kafirs*. (10:69)<sup>407</sup>

The use of the term *kafirs* in this context - i.e. *kafirs* = *shirk* – is also used in the Qur'an in other verses, utilising the image of a euphemism or with the use of a simile. In both 13:15 and 24:39 the *kafirs* = *shirk* concept is compared to the image of a man without water in the desert, who stretches out his hands towards a mirage of water ahead of him. The verses are cited as :

<sup>406</sup> Ibid., p127, Qur'an, 5:76-77

<sup>407</sup> Izutsu, Ibid., p127, Qur'an, 10:69



لَهُ دَعْوَةُ الْحَقِّ وَالَّذِينَ يَدْعُونَ مِنْ دُونِهِ لَا يَسْتَجِيبُونَ لَهُمْ بِشَيْءٍ إِلَّا كَبَاسِطٍ  
كَفِّهِ إِلَى الْمَاءِ لِيَبْلُغَ فَاهُ وَمَا هُوَ بِبَالِغِهِ وَمَا دُعَاءُ الْكَافِرِينَ إِلَّا فِي ضَلَالٍ

To Him alone is the prayer of truth, whilst those unto whom they pray apart from God answer them naught. It may be compared to a man who stretches forth his hands to water that it may come unto his mouth, and it reaches it not. The prayer of the *kafirs* is to go astray. (13:15)

وَالَّذِينَ كَفَرُوا أَعْمَالُهُمْ كَسَرَابٍ بِقِيعَةٍ يَحْسَبُهُ الظَّمَانُ مَاءً حَتَّى إِذَا جَاءَهُ لَمْ  
يَجِدْهُ شَيْئًا وَوَجَدَ اللَّهَ عِنْدَهُ فَوَفَّاهُ حِسَابَهُ وَاللَّهُ سَرِيعُ الْحِسَابِ

As for those who are *kafirs*, their deeds are like a mirage in the desert; the thirsty man takes it for water, till when he comes unto it he finds it naught, but he finds God instead, and He pays him his account. For swift indeed is God at reckoning. (24:39)<sup>408</sup>

Following verse 24: 39, the next verse, 40, provides another comparison that pictures *kafirs* = *mushrik*, with a man covered over by very thick layers of darkness, while travelling on a vast open, abysmal sea :

أَوْ كَظُلُمَاتٍ فِي بَحْرٍ لُجِّيٍّ يَغْشَاهُ مَوْجٌ مِّنْ فَوْقِهِ مَوْجٌ مِّنْ فَوْقِهِ سَحَابٌ  
ظُلُمَاتٌ بَعْضُهَا فَوْقَ بَعْضٍ إِذَا أَخْرَجَ يَدَهُ لَمْ يَكْذِبْ رَاهَا وَمَنْ لَّمْ يَجْعَلِ اللَّهُ لَهُ  
نُورًا فَمَا لَهُ مِنْ نُّورٍ

Or like darkness upon an abysmal sea, covered by a wave above which is a wave, overspread with clouds, darkness upon darkness. When he stretches forth his hand, scarce can he see it. To whomsoever God has given no light, for him there can be no light. (24:40)<sup>409</sup>

Another simile used in the Qur'an in this context, here emphasises the essential vanity basement for all of the deeds undertaken by the *mushrik* :

حُنْفَاءٌ لِلَّهِ غَيْرَ مُشْرِكِينَ بِهِ وَمَنْ يُشْرِكْ بِاللَّهِ فَكَأَنَّمَا خَرَّ مِنَ السَّمَاءِ فَتَخْطَفُهُ  
الطَّيْرُ أَوْ تَهْوِي بِهِ الرِّيحُ فِي مَكَانٍ سَحِيقٍ

Whoso associates (*yushrik*, verbal form corresponding to the participial-adjectival *mushrik*) with God [partners], it is as though he has fallen from

<sup>408</sup> Both Qur'anic verses are cited from Izutsu, Ibid., p128

<sup>409</sup> Izutsu, Ibid., p128, Qur'an, 24:40



the sky and the birds snatch him away, or the wind blows him away to a far-off place. (22:32)<sup>410</sup>

#### **2.4.2 Classical Exegete's *tafsir* (exegesis) on *shirk*.**

##### **Verse Nisa' 4:48**

إِنَّ اللَّهَ لَا يَغْفِرُ أَنْ يُشْرَكَ بِهِ وَيَغْفِرُ مَا دُونَ ذَلِكَ لِمَنْ يَشَاءُ وَمَنْ يُشْرِكْ  
بِاللَّهِ فَقَدْ أَفْترَىٰ إِثْمًا عَظِيمًا ﴿٤٨﴾

Allâh forgiveth not that partners should be set up with Him; but He forgiveth anything else, to whom He pleaseth; to sets up partners with Allâh is to devise a sin most heinous indeed.<sup>411</sup>

Al-Suyuti (d.911AH) makes a very interesting remark in his commentary of 4:48, where he argues that there is a distinct similarity in the meaning of both *Shirk* and *kufr*. He even takes this point further, to actually equate the meaning of two terms.<sup>412</sup>

In his commentary, Al-Alusi (d.127AH), mentions that *shirk* means “to associate a partner with Allah in His Divinity.” He also cites that, according to Ibn ‘Abbas, *shirk* can also be used in reference to “disbelief in general.”<sup>413</sup> Ibn Kathir mentions that, according to Ibn Mas’ud, the Prophet was once requested to explain what exactly was the ‘greatest sin.’ It is recorded in the *ahadith* collections of both al-Bukhari and Muslim, that the Prophet replied the greatest sin was for anyone to “make a rival with Allah while He alone created you.”<sup>414</sup>

<sup>410</sup> Ibid., p128, Qur’an, 22:32

<sup>411</sup> Abdullah Yusuf Ali, op. cit., Vol. I, p195. Yusuf Ali also mentions that the “sin” in question relates to: “Just as in an earthly kingdom the worst crime is that of treason, as it cuts at the very existence of that State, so in the spiritual kingdom, the unforgivable sin is that of contumacious treason against God by putting up God’s creatures in rivalry against Him. This is rebellion against the essence and source of spiritual life. It is what Plato would call “lie in the soul.” But even here, if rebellion is through ignorance, and is followed by sincere repentance and amendment, God’s Mercy is always open,” see Abdullah Yusuf Ali, op. cit., Vol. I, in footnote 569 on p195.

<sup>412</sup> al-Suyuti, Jalal al-Din Abdel Rahman Ibn Abu Bakr, *Ruh al-Ma’ani fi tafsir al-Qur’an al-‘Azeem wa al-Sab’ al-Mathani*, Vol.I-XVI, 1994, Vol.2, p302

<sup>413</sup> al-Alusi, Shihaboldin al-Sayyid Mahmoud, *al-Dur al-Manthur fi al-Tafsir al-Ma’thur*, Vol.I-VI, 2000, Vol.3, p50

<sup>414</sup> Ibn Kathir, al-Qurayshi al-Dimashqi ‘Imad al-Din Abi al-Fida’ Isma’il, ‘*Tafsir al-Quran al-‘azeem*,’ Vol. I-4, 1995, edited and revised by al-Sheikh Khalid M Maharam, Beirut: al-Maktaba al-‘Asriyya, Vol.1, p453 This *hadith* has been reported by both al-Bukhari in *Fath al-Bari*, Vol.8 p350 and by Muslim in *Sahih Muslim*, Vol.I, p90



In all the commentaries presented on verse 4:48 by al-Zamakhshari<sup>415</sup>, al-Baydawi<sup>416</sup>, al-Tabari<sup>417</sup> and Ibn ‘Abbas<sup>418</sup> none of these classical exegetes mentions anything regarding the meaning of *Shirk*.

### Verse Nisa’ 4:116

إِنَّ اللَّهَ لَا يَغْفِرُ أَنْ يُشْرَكَ بِهِ وَيَغْفِرُ مَا دُونَ ذَلِكَ لِمَنْ يَشَاءُ وَمَنْ يُشْرِكْ بِاللَّهِ فَقَدْ ضَلَّ ضَلَالًا بَعِيدًا ﴿١١٦﴾

Allâh forgiveth not (the sin of) joining other gods<sup>419</sup> with Him: but He forgiveth whom he pleaseth other sins than this: one who joins other gods with Allah, hath strayed strayed far, far away (from the Right).<sup>420</sup>

In his commentary on 4:116, al-Tabari mentions that the reference to *shirk* in this verse means: “to worship a partner with Allah,” or “to make a partner to Allah in His worship”<sup>421</sup> Also Al-Alusi in his commentary on this verse, argues that one of the meanings of *shirk* is “to deny Allah’s creativity,” or “to deny the Creator – Allah.”<sup>422</sup> However, in all the commentaries presented on verse 4:116 by al-Zamakhshari<sup>423</sup>, al-Baydawi<sup>424</sup>, al-Suyuti,<sup>425</sup> Ibn Kathir<sup>426</sup> and Ibn ‘Abbas<sup>427</sup> again, none of these classical exegetes mentions anything regarding the meaning of *Shirk*.

<sup>415</sup> Az-Zamakhshari, Mahmud ibn ‘Umar, *al-Kashshaf ‘an haqaiq qawamid al-tanzil wa ‘ayoun al-agawil fi wujuh al-Ta’wil*, 1987, Vol. 1-4, Beirut: Dar al-Kitab al-‘Arabi. (The book is normally referred to as just *al-Kashshaf*), Vol.I, p519-520

<sup>416</sup> Baydawi, Abdallah Ibn Omer, ‘*Anwar al-Tanzil wa asrar al-ta’wil*,’ Beirut: Dar al-Kutub al-Ilmiyyah, 1999, Vol.I, p218

<sup>417</sup> Al-Tabari, Abu Ja’far Muhammad ibn Jarir, *Jam’a al-Bayan ‘an ta’wil ayat al-Quran*, Beirut: Dar al-Kutub al-Ilmiyyah, 1999 Vol.4, p128-129

<sup>418</sup> Ibn ‘Abbas, ‘Abdullah Ibn, ‘*Tanwir al-Miqbas min tafsir Ibn ‘Abbas*,’ 2000, Beirut: Dar al-Kutub al-Ilmiyyah, p94. Although Ibn ‘Abbas is cited by Al-Alusi, he actually made no comment related to *Al-Shirk* in this particular verse.

<sup>419</sup> Abdullah Yusuf Ali states here that “Blasphemy in the spiritual kingdom is like treason in the political kingdom”, see Abdullah Yusuf Ali, op. cit., Vol. I, in footnote 626 on p217

<sup>420</sup> Abdullah Yusuf Ali, op. cit., Vol. I, p217

<sup>421</sup> Al-Tabari, *Jam’a al-Bayan ‘an ta’wil ayat al-Quran*, op.cit., Vol.4, p278

<sup>422</sup> al-Alusi, Shihaboldin al-Sayyid Mahmud, *al-Dur al-Manthur fi al-Tafsir al-Ma’tthur*, op.cit Vol.3, p142

<sup>423</sup> Al-Zamakhshari, *al-Kashshaf*, op.cit., Vol.I, p565-566

<sup>424</sup> Baydawi, Abdallah Ibn Omer, ‘*Anwar al-Tanzil wa asrar al-ta’wil*,’ op.cit., Vol.I, p237

<sup>425</sup> al-Suyuti, Jalal al-Din Abdel Rahman Ibn Abu Bakr, *Ruh al-Ma’ani fi tafsir al-Qur’an al-‘Azeem wa al-Sab’ al-Mathani*, op.cit., Vol.2, p393

<sup>426</sup> Ibn Kathir, ‘*Tafsir al-Quran al-‘azeem*,’ op.cit., Vol.1, p453

<sup>427</sup> Ibn ‘Abbas, ‘*Tanwir al-Miqbas min tafsir Ibn ‘Abbas*,’ op.cit., p94



**Verse Luqmân 31:13**

وَإِذْ قَالَ لُقْمَانُ لِابْنِهِ وَهُوَ يَعِظُهُ يَا بُنَيَّ لَا تُشْرِكْ  
بِاللَّهِ إِنَّ الشِّرْكَ لَظُلْمٌ عَظِيمٌ ﴿١٣﴾

Behold, Luqmân<sup>428</sup> said to his son by way of instruction: “O my son! Join not in worship (others) with Allâh: for false worship is indeed the highest wrong-doing (Zûlm).<sup>429</sup>

In his commentary on 31:13, al-Zamakhshari hints that *shirk* could mean the word which represents the act of someone who “equates between the One from whom every Grace came from (Allah) with the ones who do not offer any Grace.”<sup>430</sup> Similarly, al-Baydawi mentions exactly the same interpretation of *Shirk* in his commentary on this verse.<sup>431</sup> In Ibn Kathir’s commentary, he mentions that *Shirk* “is a grave sin to associate others in worship, alongside with Allah.”<sup>432</sup> However, in all the commentaries presented on verse 31:13 by al-Suyuti<sup>433</sup>, al-Tabari<sup>434</sup>, al-Alusi<sup>435</sup> and of Ibn ‘Abbas<sup>436</sup> none of these classical exegetes mention anything regarding *Shirk*., or in reference to its meaning.

**Verse Saba’, 34:22**

قُلْ أَدْعُوا الَّذِينَ زَعَمْتُمْ مِنْ دُونِ اللَّهِ لَا يَمْلِكُونَ  
مِثْقَالَ ذَرَّةٍ فِي السَّمَوَاتِ وَلَا فِي الْأَرْضِ وَمَا لَهُمْ فِيهِمَا مِنْ  
شِرْكِ وَمَا لَهُ مِنْهُمْ مَنِ ظَاهِرٍ ﴿٢٢﴾

<sup>428</sup> Abdullah Yusuf Ali explains that: “Luqmân is held up as a pattern of wisdom, because he realised the best in a wise life in this world, as based upon the highest Home in the inner life. To him, as in Islam, true human wisdom is also divine; the two cannot be separated. The beginning of all wisdom, therefore, is conformity with the Will of God,” see Abdullah Yusuf Ali, op. cit., Vol. III, in footnote 3595 on p1082

<sup>429</sup> Abdullah Yusuf Ali, op. cit., Vol. III, p1082-1083

<sup>430</sup> Al-Zamakhshari, *al-Kashshaf*, op.cit., Vol.3, p494

<sup>431</sup> Baydawi, Abdallah Ibn Omer, ‘*Anwar al-Tanzil wa asrar al-ta’wil*,’ op.cit., Vol.2, p228

<sup>432</sup> Ibn Kathir, ‘*Tafsir al-Quran al-‘azeem*,’ op.cit., Vol.3, p415

<sup>433</sup> al-Suyuti, Jalal al-Din Abdel Rahman Ibn Abu Bakr, *Ruh al-Ma’ani fi tafsir al-Qur’an al-‘Azeem wa al-Sab’ al-Mathani*, op.cit., Vol.5, p310-314

<sup>434</sup> Al-Tabari, *Jam’a al-Bayan ‘an ta’wil ayat al-Quran*, op.cit., Vol.10, p209

<sup>435</sup> al-Alusi, Shihaboldin al-Sayyid Mahmoud, *al-Dur al-Manthur fi al-Tafsir al-Ma’thur*, op.cit., Vol.11, p84

<sup>436</sup> Ibn ‘Abbas, ‘*Tanwir al-Miqbas min tafsir Ibn ‘Abbas*,’ op.cit., p433



Say: "Call upon other (gods)<sup>437</sup> whom ye fancy, besides Allâh: they have no power, – not the weight of an atom, – in the heavens or on the earth;<sup>438</sup> No (sort of) share have they therein, nor is any of them a helper to Allâh.<sup>439</sup>

In his commentary on 34:22, az-Zamakhshari states that *shirk* is "worshipping others but *not* Allah."<sup>440</sup> Al-Baydawi suggests that *shirk* means "partnership"<sup>441</sup> and Ibn 'Abbas also mentions that *shirk* means the "partnership with Allah" in worship.<sup>442</sup> Al-Suyuti believes that *shirk* actually means that somebody has "a partner" during worship<sup>443</sup>, and al-Tabari states that both of these meanings are valid. He argues that *shirk* can mean both the "partnership" and having "a partner."<sup>444</sup>

However, al-Alusi suggests another view, that *shirk* relates to a person who undertakes the worship of objects as idols, by using them as a "subordinate partial partnership, not with creativity or an Absolute Kingship."<sup>445</sup> Ibn Kathir also presents another perspective, in stating that his understanding of *shirk* is when a person is "possesses some independence or being partners" in the worship of other objects.<sup>446</sup>

### **Verse Fâtir or Al-Malâ'ikah, 35:40**

قُلْ أَرَأَيْتُمْ شُرَكَاءَ كُمُ الَّذِينَ تَدْعُونَ مِنْ دُونِ اللَّهِ أَرُونِي مَاذَا خَلَقُوا  
مِنَ الْأَرْضِ أَمْ لَهُمْ شِرْكٌ فِي السَّمَوَاتِ أَمْ آتَيْنَهُمُ كِتَابًا فَهُمْ عَلَى  
بَيِّنَةٍ مِّنْهُ بَلْ إِن يَعِدُ الظَّالِمُونَ بَعْضُهُم بَعْضًا إِلَّا غُرُورًا ﴿٤٠﴾

<sup>437</sup> Abdullah Yusuf Ali suggests here, that "other gods" would refer to: "Other objects of worship, such as Self, or Money, or Power, or things we imagine will bring us luck or prosperity, though they can do nothing of that kind," Abdullah Yusuf Ali, op. cit., Vol. III, in footnote 3822 on p1141

<sup>438</sup> Yusuf Ali also points out that: "The false gods have no power whatever either in heaven or on earth, either in influencing our spiritual life or our ordinary worldly life. To suppose that they have some share, or that they can give some help to God, even though God is Supreme, is both false and *blasphemous*," (Italics added for emphasis), see Abdullah Yusuf Ali, op. cit., Vol. III, in footnote 3823 on p1141

<sup>439</sup> Abdullah Yusuf Ali, op. cit., Vol. III, p1141

<sup>440</sup> Al-Zamakhshari, *al-Kashshaf*, op.cit., Vol.3, p579

<sup>441</sup> Baydawi, Abdallah Ibn Omer, '*Anwar al-Tanzil wa asrar al-ta'wil*,' op.cit., Vol.2, p260

<sup>442</sup> Ibn 'Abbas, '*Tanwir al-Miqbas min tafsir Ibn 'Abbas*,' op.cit., p454

<sup>443</sup> al-Suyuti, Jalal al-Din Abdel Rahman Ibn Abu Bakr, *Ruh al-Ma'ani fi tafsir al-Qur'an al-'Azeem wa al-Sab' al-Mathani*, op.cit., Vol.5, p441

<sup>444</sup> Al-Tabari, *Jam'a al-Bayan 'an ta'wil ayat al-Quran*, op.cit., Vol.10, p271

<sup>445</sup> al-Alusi, Shihaboldin al-Sayyid Mahmoud, *al-Dur al-Manthur fi al-Tafsir al-Ma'thur*, op.cit., Alusi, Vol.11, p309

<sup>446</sup> Ibn Kathir, '*Tafsir al-Quran al-'azeem*,' op.cit., Vol.3, p499



Say: "Have you seen (these) 'Partners' of yours whom ye call upon besides Allâh? Show me what it is they have created in the (wide) earth. Or have they a share in the heavens?" Or have We given them a Book, from which they (can derive) clear (evidence)? – Nay, the wrong-doers, (*Zâlimûn* – polytheists) promise each other nothing but delusions."<sup>447</sup>

In his commentary on 35:40, az-Zamakhshari mentions that the use of *shirk* here means "those partners who were worshipped as gods."<sup>448</sup> Al-Baydawi mentions that this verse states the question: "Do they have any kind or partnership, no matter how fractional, with Allah, with which they could deserve being partners with, in Divinity?"<sup>449</sup> Al-Alusi interprets the verse in very similar manner to al-Baydawi, by re-phrasing the question to ask: "Do they have any partnership with God, in the Creation of the Heavens, by which they could rightfully deserve what had been allegedly attributed to them?"<sup>450</sup>

Ibn Kathir mentions here the same commentary that he made previously for the verse Q34:22, that *shirk* means that people "possess some independence or being partners" with idols, for their worship.<sup>451</sup> However, in the commentaries provided on verse 35:40 by Al-Suyuti<sup>452</sup>, al-Tabari<sup>453</sup> and Ibn 'Abbas<sup>454</sup> none of these classical exegetes mention any point that relates to *shirk*.

## **2.5 The Taliban's destruction of the Buddha statues in Afghanistan, March 2001**

In reflection of what occurred during the first week of March 2001, a very contemporary case study occurred indicating how the activity of *Shirk* (الشرك) can be dealt with in Islam in modern times. During 1-6 March, 2001, *Mullah* Mohammed Omar, the leader of the Taliban in Afghanistan, made international news having destroyed 1,800 year old Buddha statues, in Bamiyan, Afghanistan. The Taliban argued that the Buddha statues were considered to be 'idols' being worshipped, and

<sup>447</sup> Abdullah Yusuf Ali, op. cit., Vol. III, p1165

<sup>448</sup> Al-Zamakhshari, *al-Kashshaf*, op.cit., Vol.3, p617

<sup>449</sup> Baydawi, Abdallah Ibn Omer, '*Anwar al-Tanzil wa asrar al-ta'wil*,' op.cit., Vol.2, p274

<sup>450</sup> al-Alusi, Shihaboldin al-Sayyid Mahmud, *al-Dur al-Manthur fi al-Tafsir al-Ma'thur*, op.cit., Vol.3, p50

<sup>451</sup> Ibn Kathir, '*Tafsir al-Quran al-'azeem*,' op.cit., Vol.3, p522

<sup>452</sup> al-Suyuti, Jalal al-Din Abdel Rahman Ibn Abu Bakr, *Ruh al-Ma'ani fi tafsir al-Qur'an al-'Azeem wa al-Sab' al-Mathani*, op.cit., Vol.5, p478

<sup>453</sup> Al-Tabari, *Jam'a al-Bayan 'an ta'wil ayat al-Quran*, op.cit., Vol.10, p420

<sup>454</sup> Ibn 'Abbas, '*Tanwir al-Miqbas min tafsir Ibn 'Abbas*,' op.cit., p463



were therefore, an “insult” to Islam.<sup>455</sup> They argued that such worshippers as Buddhists are considered to be polytheists (*mushrikun*), having a range of ‘gods’ which they worship.<sup>456</sup>

The ancient Buddha statues in Bamiyan, a region of Afghanistan, were considered to be idols that are worshipped by infidels and are therefore an “insult” to Islam. This was the view that was declared by the Taliban which were considered to be an Islamic ‘fundamentalist’ group, controlling Afghanistan.<sup>457</sup> “The Taliban have ruled that all images and man-made idols are insulting to Islam.”<sup>458</sup> This can be categorised as being an act of blasphemy through profanity in the offence of *shirk*. This refers to a person being accused of worshipping either some animate or inanimate object alongside with God, in giving that object of worship the equal divinity and deity that should be held only for God alone. Such worshippers would generally be polytheists, worshipping a range of ‘gods’.

In some news reports, the Taliban had begun the demolition of two main rock carved statues of Buddha, which were the largest of their kind in the world, standing at approximately 53 metres (125 feet) high.<sup>459</sup> They were “carved into the hillside nearly 2,000 years ago,”<sup>460</sup> and dated back to between the second and fifth centuries AD, before the coming of Islam, when Afghanistan was a centre of Buddhist learning and pilgrimage.<sup>461</sup> It is also known that “Afghanistan’s early Buddhist culture, which

<sup>455</sup> ‘UN warns Taleban over Buddha statues,’ BBC News Friday, 2 March, 2001, on [http://news.bbc.co.uk/1/hi/english/world/south\\_asia/newsid\\_1197000/1197900.stm](http://news.bbc.co.uk/1/hi/english/world/south_asia/newsid_1197000/1197900.stm).

<sup>456</sup> For a full, detailed analysis of how Muslim theologians and scholars rejected any justification of the statues’ destruction, the argument that it contradicts the Qur’an, and also that the Taliban’s public statements to defend the destruction were inaccurate, see O’Sullivan, Declan, ‘Taliban Destroy the Buddha Statues in Afghanistan : Does Islam Really Believe : ‘There is no compulsion in Religion’ (Al-Baqarah, 2:256)?’ in *Le Courrier Du Geri – Recherches D’Islamologie et de Theologie Musulmane*, Vol. 4, No.1/2, Printemps-Hiver 2001, GERI (Groupe d’Etudes et de Recherches Islamologiques) in l’Université Marc Bloch de Strasbourg, France, p45-84

<sup>457</sup> ‘UN warns Taleban over Buddha statues’, BBC News, Friday, 2 March, 2001, on: [http://news.bbc.co.uk/1/hi/world/south\\_asia/1197900.stm](http://news.bbc.co.uk/1/hi/world/south_asia/1197900.stm) Also see O’Sullivan, Declan, ‘Taliban Destroy the Buddha Statues in Afghanistan : Does Islam Really Believe : ‘There is no compulsion in Religion’ (Al-Baqarah, 2:256)?’ in *Le Courrier Du Geri – Recherches D’Islamologie et de Theologie Musulmane*, Vol. 4, No.1/2, Printemps-Hiver 2001, GERI (Groupe d’Etudes et de Recherches Islamologiques) in l’Université Marc Bloch de Strasbourg, France, p71. This article is also found on: <http://www.persocite.com/Orient/numero4.htm>

<sup>458</sup> ‘Top museum offers to buy ancient statues from Taliban’, *Irish Independent*, 3 March, 2001. Also see O’Sullivan, Declan, *ibid.*, p71

<sup>459</sup> ‘UN warns Taleban over Buddha statues’, BBC News, *op.cit.*, also see ‘Pressure on Taleban urged’, BBC News, 3 March, 2001, on: [http://news.bbc.co.uk/1/hi/world/south\\_asia/1197735.stm](http://news.bbc.co.uk/1/hi/world/south_asia/1197735.stm)

<sup>460</sup> ‘UN warns Taleban over Buddha statues’, BBC News, *ibid.*

<sup>461</sup> *Ibid.* Also see ‘Top museum.....’, *Irish Independent*, 3 March, 2001, *op.cit*



flourished from ancient times until Arab invaders brought Islam in the 7<sup>th</sup> century, flourished along the fabled Silk Route.”<sup>462</sup>

The French news agency AFP stated that Taliban fighters launched rockets, tankshells and even fired automatic rifles, when attacking the statues. The reports were initially not confirmed, as journalists had been denied any access to the area, but they followed an announcement that was presented earlier in the week by *Mullah* Mohammed Omar, the Taliban’s spiritual leader: “all graven images in the country would be destroyed.”<sup>463</sup> Thus, “The Taleban [*sic*] – a hard-line Muslim movement – has dismissed international pressure to save the statues, declaring them ‘idols’ which are “insulting to Islam.”<sup>464</sup>

The international reaction was of shock and horror and this act of destruction was viewed as being totally unacceptable. India referred to the destruction of the artefacts a “regression into mediaeval barbarism” and offered to transport all artefacts out of Afghanistan, ‘for the benefit of all mankind,’ stressing that the products would still remain the ‘treasures’ of the Afghan people.<sup>465</sup> Even Pakistan, which is one of only three countries that recognise the Taliban as legitimate rulers and acknowledge Afghanistan as a state, (the other two countries being Saudi Arabia and the United Arab Emirates<sup>466</sup>), strongly criticised these actions. A statement from the Pakistani Foreign Ministry declared the need and the importance of maintaining “the preservation of all the world’s historical, cultural and religious heritage.”<sup>467</sup> Countries where Buddhism is the official religion, including Nepal, Sri Lanka and Thailand were astonished and also denounced the Taliban’s need for such destruction.

Phillip De Montebello, the director of The Metropolitan Museum of Art in New York, offered to pay an unlimited amount, as “the price is nominal”<sup>468</sup> to obtain the statues

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<sup>462</sup> ‘Top museum.....’, *Irish Independent*, 3 March, 2001, *ibid*.

<sup>463</sup> Harding, Luke, ‘Taliban blow apart 2,000 years of Buddhist history: Fighters begin job of demolishing Afghanistan’s statues’ in *The Guardian*, 3 March, 20001. Also see ‘UN warns Taleban over Buddha statues’, BBC News, *op.cit*. Also see O’Sullivan, Declan, ‘Taliban Destroy the Buddha Statues in Afghanistan’, *op.cit.*, p72

<sup>464</sup> Harding, Luke, *ibid*. Also see, ‘UN warns Taleban over Buddha statues’, BBC News, *op.cit*. Also see O’Sullivan, *ibid.*, p72

<sup>465</sup> ‘UN warns Taleban over Buddha statues’, BBC News, *ibid*.

<sup>466</sup> ‘Pressure on Taleban urged’, BBC News, *op.cit*. Also see O’Sullivan, *op.cit.*, p72

<sup>467</sup> ‘UN warns Taleban over Buddha statues’, BBC News, *op.cit*.

<sup>468</sup> Phillip De Montebello, the Director of the Metropolitan Museum, New York, during a ‘live’ interview on the BBC 1 ‘10 O’Clock News’ on 2 March, 2001. Also see ‘Top museum offers to buy ancient statues from Taliban’, *Irish Independent*, 3 March, 2001, *op.cit*.



and other artefacts, rather than see them destroyed. On 1 March, the Afghan Information Minister, Qudratullah Jamal, confirmed that historic statues in Kabul's museum and in the provinces of Ghazni, Herat, Jalalabad and Kandahar were also destroyed.<sup>469</sup>

The Taliban leader in Afghanistan, *Mullah* Mohammed Omar, still defended the controversial order to destroy the Buddhist statues. He called on Muslims around the world to back that decision. The Taliban ambassador in Islamabad stated on 5 March, 2001 that the destruction of the statues had begun, but had been temporarily suspended, due to the three-day celebration of the Islamic festival *Eid*.<sup>470</sup>

During a radio programme *Mullah* Mohammed Omar argued that the annihilation of the statues would proceed despite such international condemnation and other protests from Islamic states. He also claimed that people should be proud of destroying the statues, which represent idol worshipping by pagans. He was quoted by the *Voice of the Shariat* radio station as declaring that:

I ask Afghans and the world's Muslims to use their sound wisdom.....Is it appropriate to be influenced by the propaganda of the infidels? Now that we are destroying false idols, the world has made a drama out of this. The Muslims of the world, particularly Afghan Muslims, should use their common [sic] sense.<sup>471</sup>

A special envoy from the United Nations cultural body, UNESCO, was sent to Afghanistan in an attempt to prevent further damage and destruction, as "according to the Taleban [sic] ambassador the statues have been one quarter destroyed by dynamite."<sup>472</sup> Access was denied for journalists to visit the site of the Bamiyan sandstone cliffs where the statues were located. However, they were presented with information from the Taliban which demanded that other artefacts throughout the country would be sought after and destroyed. The UN special envoy, Pierre LaFrance, held talks with the Taleban Foreign Minister Wakil Ahmad in the Afghan city of Kandahar. The news agency the *Afghan Islamic Press*, based in Pakistan, quoted Mr

<sup>469</sup> Harding, Luke, op.cit. Also see *Irish Independent*, ibid. and also 'UN warns Taleban over Buddha statues', BBC News, op.cit.

<sup>470</sup> 'Taleban Leader Defends Statue Purge', BBC News, 5 March, 2001, on: [http://news.bbc.co.uk/1/hi/world/south\\_asia/1202609.stm](http://news.bbc.co.uk/1/hi/world/south_asia/1202609.stm) Also see O'Sullivan, op.cit., p73

<sup>471</sup> Ibid. Also see O'Sullivan, ibid., p73

<sup>472</sup> Ibid.

Mutawakil as describing “the issue of the statues as an internal matter which the world would eventually understand.”<sup>473</sup>

It is interesting to note here that to defend the acts of destruction Sayed Rahmatullah Hashmi, a Taliban spokesman in the United States, informed the BBC that “the statues were being destroyed to retaliate for the 1992 demolition of the ancient mosque at Ayodhya in India by Hindu activists”<sup>474</sup> and he argued that there was no international media coverage or any government intervention that was present on that occasion. Therefore, if the West claims to be the guardian of ‘cultural heritage,’ there did not appear to be any condemnation following the destruction of the historical Babri Mosque in India, in 1992. The Babri Mosque, was attacked by a crowd-riot, in an attempt to ‘cleanse’ India of all Islamic shrines, palaces and artefacts. El-Kassem states that, “two-hundred million Indian Muslims were attached to the Babri Mosque, while there is not a single Buddhist living in Afghanistan.”<sup>475</sup> He raises another valid point, when questioning: “Where were the guardians of cultural heritage when mosques, libraries, historic buildings, and museums were destroyed in Bosnia, Kosovo and Palestine?”<sup>476</sup>

He refers to a very salient issue, when declaring that “over 3000 Cambodian Buddhist temples were destroyed in bombings by the U.S. and the Pol Pot regime during the Indochina War.”<sup>477</sup> And further declares that :

The ‘culturally advanced’ U.S. sent 24 American long-range missiles streaking over Pakistani air space and destroyed the beautiful ‘people’s mosque’ in Afghanistan while attempting to murder Osama Bin Laden. Many innocent worshippers were killed in the process. This mosque, though not towering like the Buddha statues, or as imposing as the Pharaonic pyramids of Egypt, was not built by slave labour.<sup>478</sup>

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<sup>473</sup> Ibid. p74

<sup>474</sup> ‘UN warns Taleban over Buddha statues’, BBC News, op.cit. Also see O’Sullivan, ibid., 74

<sup>475</sup> El-Kassem, Munir, op.cit. Also see Siddiqui, Haroon, ‘Afghanistan’s Buddhas: But Little Said About Dying Children,’ *The Toronto Star*, March 22, 2001 and also in *The Canadian Islamic Congress Friday Bulletin*, Thursday 29 March, 2001/Muharam 05, 1421, Year: 4, Vol.4, Issue 18, distributed by e-mail from [cic@cicnow.com](mailto:cic@cicnow.com) Also see O’Sullivan, ibid., p80

<sup>476</sup> El-Kassem, Munir, Ibid. Also see O’Sullivan, ibid., p80

<sup>477</sup> El-Kassem, Munir, Ibid. Also see O’Sullivan, ibid., p80



### **2.5.1 Muslim Scholars Reject the Act to be Supported by Islam or the Qur'an**

The American Muslim Council (AMC) sent out a message of concern, stating clearly that they believed these acts by the Taliban to be contrary to Islam. They were also adamant to make the point that such behaviour should not be supported by any genuinely devout Muslim, who believed in the real message of the Qur'an. The title of their information bulletin was : *American Muslims Condemn Taliban Destruction of Buddhist Statues as Un-Islamic*. Within this document, dated 9 March, 2001, they confirmed that the attacks had occurred, and also distanced themselves from this action, clarifying that it cannot be defended within Islam or by the Qur'an :According to reports today, the ruling Taliban government of Afghanistan has dynamited and completely destroyed the two ancient Bamiyan Buddha statues in central Afghanistan, despite worldwide pleas to save them. The American Muslim Council is deeply disturbed by the Taliban's recent destruction of the two ancient Buddhist statues despite offers from foreign museums to buy them and a proposal to build a giant wall to hide them.

American Muslim leaders nationwide have condemned the acts of the Taliban as reprehensible, stating that their actions betray Islam's inherent respect for other religions and specific commands in the Qu'ran that emphasise tolerance for all religions.<sup>479</sup>

Dr.Ali Mazrui, the Director of the Institute of Global Cultural Studies, from the Binghamton University in America argued that The Taliban do not represent or characterise any aspect of Islam on any level of understanding, and they needed to recognise the real nature of Islam and the manner of which it should be practiced:

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<sup>478</sup> El-Kassem, Munir, Ibid. Also see O'Sullivan, ibid., p81

<sup>479</sup> *AMC-NET: American Muslims Condemn Taliban Destruction of Buddhist Statues as Un-Islamic*, Friday 9 March, 2001, on-line e-mail information service from AMC MEDIA DEPARTMENT; Contact: Neveen Salem, Director of Communications and Media, e-mail: [media@amconline.org](mailto:media@amconline.org)  
The American Muslim Council (AMC), 1212 New York Avenue, NY, Suite 400, Washington DC 20005. Also see O'Sullivan, ibid., p75

Those who would like their own sacred symbols respected owe a similar level of respect to the sacred symbols of others. The Muslim world is therefore offended not just when an ancient mosque is demolished in Ayodiah, India, not just when the Al-Aqsa mosque in Jerusalem is threatened. The Muslim world is also offended when fellow Muslims desecrate Buddhist monuments in Afghanistan. The Abrahamic religions share the Golden Rule – ‘Do unto others what you would have done to you.’ The Taliban insult Islam when they abuse Buddhism.’<sup>480</sup>

Other comments concerning such destruction of the statues which had been standing there even longer than the very existence of Islam, (which, in 2001 was in the year 1421<sub>AH</sub> in the Islamic Calendar), Professor Sulayman Nyang, from Howard University in America raises the following point:

Neither a Muslim nor a non-Muslim has any right to deface, deform or violate the shrines of other faith communities. Such acts of vandalism are not condoned by Muslims and thus, it is dangerous and unwise for any non-Muslim to construe such an act as Islamic. The acts of the Taliban government fall into the category of actions that are reprehensible and unacceptable.<sup>481</sup>

On a similar note, another comment was presented by Professor Aziza Al-Hibri, an academic Islamic lawyer affiliated to the T.C. Williams school of Law at the University of Richmond, who also made reference to the age of the statues, and more so, to the indisputable level within Islam of the complete tolerance of all other religions. She also reiterated the point that Muslims are commanded to acknowledge and respect other religions, no matter how much pagan or idol-worship based they may be. On this point, Al-Hibri mentioned that the Sphinx in Cairo still remains there intact alongside the other statues of the ‘gods’ and ‘goddesses’ of Egyptian mythology, such as Isis and Osiris. She declared that :

For centuries, Islam has preserved and even maintained all prior cultural expressions, including the Egyptian Sphinx, the Persian Persepolis, ancient houses of worship belonging to other religions, and the pictures, images, artefacts and possessions they housed. In fact, had it not been for Islamic protection, these structures and artefacts may not have survived. Khalifah Umar provides an excellent example. Upon entering Jerusalem, he prohibited the destruction of any Christian images or places of worship.<sup>482</sup>

Another view that represents the anguish held by many devout Muslims, concerning the actions of the Taliban, and their blatant ‘hate of the others,’ which their acts of

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<sup>480</sup> *AMC-NET: American Muslims Condemn Taliban*, Ibid. Also see O’Sullivan, *ibid.*, p75

<sup>481</sup> *AMC-NET*, Ibid. Also see O’Sullivan, *ibid.*, p75-76



destruction seems to manifest, was presented by Dr. Yahya Basha, the President of the American Muslim Council (AMC):

The Taliban have done Islam a great injustice and should refrain from any additional destruction and misguided disrespect for other religions. It is imperative that they adhere to Islam's order to recognise religious pluralism and the freedom to practice according to those beliefs.<sup>483</sup>

### **2.5.2 Real Reasons For Taliban's Action – All Political and *Nothing* Religious ?**

In his article 'Remember, the Taliban are Politicians Too,' in *Canadian Islamic Congress Friday Bulletin*, on Thursday, 29 March, 2001, Mohamed Elmasry, argues that :

It is regrettable that the Taliban have irreparably damaged their country's cultural heritage by destroying two giant 1,500-year-old stone statues of Buddha. But to me, as a Muslim, it is just as bad that they used Islam as a pretext for justifying this wanton savagery against ancient religious art.<sup>484</sup>

The actions undertaken by the Taliban were political and in reaction to the policies provided towards Afghanistan by the West. He argues that the Taliban act in exactly the same manner as other politicians would. He argues that the Taliban use Islam as a political tool and to defend their actions. They are mainly religious students who then turned towards politics. Most of the Taliban are in their 20s and 30s and justify their policies by using Islam:

.....operating on the power of religion – as distinct from its truths and teachings – they recently ordered soldiers armed with anti-aircraft weapons to blast apart two ancient statues of Buddha. Their purge has also expanded to ravage other statues and pre-Islamic art throughout the territory they control – much of it as old or older than the 1,500-year-old figures whose demise has captured world headlines.<sup>485</sup>

He explained that the destruction of the statues was legitimate when based on the pretext of such reaction to the unacceptable behaviour in Islam of *shirk* :

The Talibans' justification for turning rockets, tanks and ground explosives upon Afghanistan's unique historic artefacts was the premise

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<sup>482</sup> AMC-NET, Ibid. Also see O'Sullivan, *ibid.*, p76

<sup>483</sup> AMC-NET, Ibid. Also see O'Sullivan, *ibid.*, p76

<sup>484</sup> Elmasry, Mohamed, 'Remember , the Taliban are Politicians Too,' *The Canadian Islamic Congress Friday Bulletin*, Thursday 29 March, 2001/Muharam 05, 1421, Year: 4, Vol.4, Issue 18, distributed by e-mail from [cic@cicnow.com](mailto:cic@cicnow.com) . Also see O'Sullivan, *ibid.*, p77

<sup>485</sup> Elmasry, *ibid.* Also see O'Sullivan, *ibid.*, p77

that Islam is against the worship of idols. Their mission is to rid the country of any reminders that it has a pre-Islamic past.<sup>486</sup>

However, it is also clear that “Muslim leaders and scholars, including those in Canada, are outraged at the Taliban government’s disastrous misuse of their faith.”<sup>487</sup> Based on this perspective Professor Youssef al-Qaradawi, the Dean of Religious Studies at Qatar University, led a delegation of prominent and well respected Islamic scholars to Afghanistan to meet with the Taliban leader, *Mullah* Mohammed Omar. The reason was to emphasise the immediate urgency for their visit, in demanding that the Taliban should terminate such destruction of the statues. Following the Taliban’s rejection to agree with any compromise that was offered by the delegation, Al-Qaradawi presented an official *fatwa* (religious ruling) which declared that “Afghanistan’s statues are not idols, do not threaten Muslim beliefs, and do not contradict Islamic doctrine.”<sup>488</sup>

The Taliban’s leaders were fully aware that they were rulers in one of the poorest of the ‘developing countries,’ and that they were internationally and politically isolated. Therefore, they were aiming to gain support from the Afghani population, who suffered from the lack of education and the lack of any medical aid. Mohamed Elmasry argued that the Taliban use Islam as their basis for instructions on ‘how to live’, in order to gain public support for their governing policies, because:

most Afghanis [*sic*] who practice Islam are barely literate and largely ignorant of its teachings, and would therefore cheer them on for destroying some ‘old statues.’ Thus, they can achieve political points against their opponents, not only the many within Afghanistan, but also those on the international scene.<sup>489</sup>

In rejecting all international pressure and defying the UN requests that they should stop the destruction of the statues, the Taliban gained national support from their uncritical supporters. However, “As for Muslims abroad and the respected scholars who tried to convince them that this is against Islam, they have been indiscriminately labelled as hypocrites.”<sup>490</sup> The Taliban believe that the entire Muslim world, sitting alongside the West, had no interest in Afghanistan, once the Russian occupation had been overthrown. Elmasry suggests that: “For the Taliban, therefore, it seems that

<sup>486</sup> Elmasry, Ibid. Also see O’Sullivan, *ibid.*, p77

<sup>487</sup> Elmasry, Ibid. Also see O’Sullivan, *ibid.*, p77

<sup>488</sup> Elmasry, Ibid. Also see O’Sullivan, *ibid.*, p78

<sup>489</sup> Elmasry, Ibid. Also see O’Sullivan, *ibid.*, p78



international revenge has been sweet; and religion made it convenient.”<sup>491</sup> He continued by suggesting that the timing of the destruction had been deliberately chosen. Analysts also raised the point that the attack could have been a reaction against the U.N. sanctions enforced on Afghanistan, which had been initiated by the USA, following the Taliban’s refusal to extradite Osama Bin Laden. As Elmasry points out:

The Taliban have repeatedly insisted that if the U.S.A. has evidence proving Bin Laden’s guilt, they themselves will prosecute and punish him.<sup>492</sup>

However, what seems to have occurred is that instead of offering such evidence the United States successfully placed pressure on the Security Council to implement the sanctions on Afghanistan, in the form of a ‘collective punishment.’ This active policy has led to the inevitable results of the widespread deprivation and high death rate for the more vulnerable among the Afghani population, including both Muslims and non-Muslims. “Afghanistan has a sizeable minority of Hindus and Sikhs who practice their religions freely.”<sup>493</sup> The sanctions may well have been the main *raison d’être* for the political act of the Buddha statue destruction, in order for the Taliban to gain international attention, but it is clear that:

The reasons that Afghanistan would want to lash out at the world for allowing its children to starve are understandable, but doing it behind a facade of devout Islam is wholly unacceptable. No doubt the Taliban are politicians, and should be treated as such. Religion has tragically little to do with it.<sup>494</sup>

The position of the Taliban was also defended by Syed Rahmatullah Hashemi, the Taliban ambassador, who declared that: “When the world destroys the future of our children with economic sanctions, they have no right to worry about our past.”<sup>495</sup> Another Taliban representative also explained that the decision to destroy the Buddha statues derived from feelings of anger and frustration. The poverty and ill-health of

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<sup>490</sup> Elmasry, Ibid. Also see O’Sullivan, *ibid.*, p78

<sup>491</sup> Elmasry, Ibid. Also see O’Sullivan, *ibid.*, p78

<sup>492</sup> Elmasry, Ibid. Also see El-Kassem, Munir, ‘Afghanistan Suffers From the West’s Double Standard’, *The Canadian Islamic Congress Friday Bulletin*, Thursday 29 March, 2001/Muharam 05, 1421, Year: 4, Vol.4, Issue 18, distributed by e-mail from [cic@cicnow.com](mailto:cic@cicnow.com)

Also see O’Sullivan, *ibid.*, p79

<sup>493</sup> Elmasry, *ibid.* Also see O’Sullivan, *ibid.*, p79

<sup>494</sup> Elmasry, *ibid.* Also see O’Sullivan, *ibid.*, p79

<sup>495</sup> Elmasry, *Ibid.*

the population had been ignored, and any international financial aid had been used for preserving such ancient objects, including the statues. As he explained :

International agencies were spending hefty amounts of money to repair the Buddhist statues, while nothing was being done to address the plight of Afghan children ravaged by malnutrition. He added that the statues were tolerated for 1500 years. Now, they had turned into a hated symbol of Western preference for rock over Afghan lives.<sup>496</sup>

The Taliban also stated the hypocrisy of the whole international community and, in particular, the criticism they had received from Russia:

It is hypocritical of a country like Russia, for example, to voice its condemnation of the Taliban over the destruction of the Buddhas. It was reported that since the Russian invasion of 1979, 'thousands of Hellenistic, Persian and Indian artefacts from Afghanistan's many-layered past have been smuggled out to the voracious and amoral Western art market.'<sup>497</sup>

However, El-Kassem clarifies that to defend the Taliban and their acts of destruction, should not be interpreted as an attack against the West, by simply comparing similar, or even equal historical events that other countries have undertaken. El-Kassem reiterates the remarks made by the Pakistani *mufti*, and also quotes from the Qur'anic verse which encourages Muslims to be tolerant towards believers of all other faiths:

The point of my article is not to justify the destruction of statues in Afghanistan. As a matter of fact, I seem to agree with the Grand Mufti of Pakistan who said, 'there could be disagreement among the scholars regarding the priorities and the methods. Some might question whether the action (destroying the statues) would alienate the Buddhist nations in Southeast Asia at a critical time for Afghanistan.' The Qur'an tells us, 'We have not set you as a keeper over them, nor are you responsible for them. Abuse not those whom they worship besides God, lest they out of spite abuse God in their ignorance.'<sup>498</sup>

The verse cited here is from Surah *Al-An'am*, 6, verse 107, which in the translation of the Qur'an by Abdullah Yusuf Ali, reads as :

وَلَوْ شَاءَ اللَّهُ مَا أَشْرَكُوا وَمَا جَعَلْنَاكَ عَلَيْهِمْ حَفِظًا وَمَا أَنْتَ عَلَيْهِمْ بِوَكِيلٍ

<sup>496</sup> El-Kassem, Munir, op.cit. Also see Siddiqui, Haroon, 'Afghanistan's Buddhas: But Little Said About Dying Children,' op.cit. Also see O'Sullivan, ibid., p80

<sup>497</sup> El-Kassem, Munir, Ibid. Also see O'Sullivan, ibid., p80

<sup>498</sup> El-Kassem, Munir, Ibid. Also see O'Sullivan, ibid., p81



If it had been Allah's plan, they would not have taken false gods: but We made thee not one to watch over their doings, nor art thou set over them to dispose of their affairs.<sup>499</sup>

El-Kassem further promotes the message of the Qur'an, which clearly demands that Muslims should carry the message of God to all humanity, and highlights the prohibition of enforcing people to accept Islam. The message also promotes the deterrence of Muslims to destroy other people's places of worship. El-Kassem concludes that :

However, as mentioned earlier, what the Taliban did in Afghanistan was not triggered by contempt towards another religion, but rather, by the hypocrisy of some members of the world community. Justice demands that condemnation should not only be directed at the weak, but also at the strong.<sup>500</sup>

Therefore, it can be argued clearly that, as Haroon Siddiqui, suggests:

So it wasn't theology, after all, that made the Taleban smash the Buddhas of Bamiyan, but rather rage at the world for offering money and expertise to save the statues but not for the people dying daily throughout drought-stricken Afghanistan.<sup>501</sup>

Sayyid Rahmatullah Hashemi is an Afghan envoy touring the United States, who declared that the rationale behind the statue's destruction can only be interpreted as a political rather than a religious factor. He argues that :

Seven hundred of our children died a month ago because of malnutrition and the severe cold weather, and the world did not care, but now everybody talks about the statues! When your children are dying in front of your eyes, you don't care about statues.<sup>502</sup>

During his presentation at the University of Southern California, and in an interview he had given to the New York Times newspaper, he declared what had actually prompted the Taliban 'clerical hierarchy' to destroy the statues. The act of attacking the Buddha statues was an immediate reaction to a visit in February 2001, by a

<sup>499</sup> *Al-An'am*, 6, verse 107 in Ali, Abdullah Yusuf, *The Holy Qur'an : Text, Translation and Commentary*, 1969, Sh. Muhammad Ashraf, Kashmiri Bazar, Lahore, Pakistan, Vol.1, p321. Also see *Hud*, 11, verse 86:

بَقِيَّةُ اللَّهِ خَيْرٌ لَّكُمْ إِن كُنتُمْ مُؤْمِنِينَ وَمَا أَنَا عَلَيْكُمْ بِحَفِيظٍ

"That which is left you by God is best for you, if ye (but) believed!  
but I am not set over you to keep watch!"

found in Ali, Abdullah Yusuf, *The Holy Qur'an*, ibid., Vol.2, p537-538. Also see O'Sullivan, ibid., p81

<sup>500</sup> El-Kassem, Munir, op.cit. Also see O'Sullivan, ibid., p82

<sup>501</sup> Siddiqui, Haroon, 'Afghanistan's Buddhas: But Little Said About Dying Children,' op.cit. Also see O'Sullivan, ibid., p82

<sup>502</sup> Siddiqui, Haroon, Ibid. Also see O'Sullivan, ibid., p82

delegation of European and UNESCO envoys, who had offered money and expertise to save, restore, or even move the artefacts into museums, away from Afghanistan. The Taliban had requested that the aid money would be far more beneficial if it was spent on food, medicine and the education system. How the UNESCO envoys responded to that request, is describes here by Sayyid Rahmatullah Hashemi :

The (Taliban) scholars told them (the UNESCO envoys) that instead of spending money on statues, why didn't they help our children who are dying of malnutrition? They rejected that, saying, 'This money is only for the statues' (because of the American-led, United Nations imposed economic sanctions). That made our people very angry.....They said, 'If you don't care about our children, then we are going to blow up those statues.' I know it is not rational or logical to blow up statues in retaliation for economic sanctions. But if the world is killing our children and destroying our future, they have no right to worry about our past.<sup>503</sup>

### **2.5.3 Conclusion of the Taliban's Destruction Campaign**

For a Muslim to argue that when destroying the statue or an artefact from another religion that this act is defended on Islamic principles, this does not propagate a very positive message in promoting Islam as religion of peace and tolerance. However, Muslim scholars presented arguments which promote a contrary message which can be found in both the Qur'an and the *ahadith* (Traditions). Another important factor for the Taliban to assess and, indeed, any person who supported the demolition of the statues, is the basic fact which contradicts the act of razing them. It is clear that if the statues were nearly 1,500-2,000 years old, then they were built several hundred years before the birth of the Prophet Muhammad and existed through the Prophet's life time. They were still standing 1,422 years after Islam was revealed to him (as it was 1422AH in the Islamic calendar, during 2001AD in the Christian calendar). Surely then, if the Prophet Muhammad defended Islam by advising believers not to attack manifestations of idol worship, then it raises the question 'why were the Buddha statues destroyed in 2001'? Indeed, was the destruction based on religion or on politics?

However, while the Taliban argued that they being 'righteous' in defending the religion of Islam, Muslims scholars rejected this view. This case study is very helpful for this specific research topic, because it highlights – very clearly – that the



conflicting opinions presented for and against the destruction parallel very closely to the same contradictory perspectives that exist in the debate this thesis discusses; concerning the death sentence for apostasy and blasphemy in Islam.

The clear parallel of such disagreements and the diametrically opposing views that are held on interpreting the message of the Qur'an, supports the hypothesis of this doctoral thesis. It also raises the question of how legitimate can the claim be that Islam is the only path for every person in the world to convert to, and therefore become part of the Ummah. For example, if there are internecine disputes between separate groups who are already believers, then one has to ask how possible can it be for *any* religion to exist without such disagreements and opposing views?

The next term discussed covers *bid'a*, which relates to the concept of 'innovation,' which would be the word in reference to something being added into the Mosque, or the form of praying or, in fact, anything that relates as a 'new' factor to the general Islamic life of a Muslim, that did not occur during the life time of the Prophet Muhammad.

## 2.6 *bid'a* (بدعة)

The main definition is: "*bid'a* : A novelty or innovation in religion; heresy; schism."<sup>504</sup> And *bid'a* is seen to be simply an "innovation."<sup>505</sup> These definitions, consider *bid'a* to be a practice or belief which was not present in Islam as it was revealed within the Qur'an and established in the *Sunna*. Thus, *bid'a* is a new introduction that is perceived to be very contrary to these sources of Islam and thus, acts of *bid'a* are argued to be contrary to the *Sunna*.<sup>506</sup>

John Henderson, in his work *The Construction of Orthodoxy and Heresy : Neo-Confucian, Islamic, Jewish and Early Christian Patterns*, argues that :

There are several Islamic terms of rather different derivations that might reasonably be rendered as 'heresy.' One of the most common of these is

<sup>503</sup> Siddiqui, Haroon, Ibid. Also see O'Sullivan, ibid., p83

<sup>504</sup> Thomas P. Hughes, *Dictionary of Islam*, 1895, p42

<sup>505</sup> Cyril Glasse, *The Concise Encyclopaedia of Islam*, op. cit., p73

<sup>506</sup> Ibid., p73, also see Bernard Lewis, op. cit., p283

*bid'a*, 'meaning innovation, and more specifically any doctrine or practice not attested in the time of the Prophet.'<sup>507</sup>

Mohammad Hashim Kamali defines *bid'a* as "either an innovation which cannot be vindicated by authoritative precedent, or a pernicious innovation which is far removed from normal and established practice."<sup>508</sup> *Bid'a* is also defined as an innovation into religion, accommodating that which has been set within *Shari'a* thus, it is then acceptable and has been approved of. The Arabic definition of *bid'ah* in this form reads as follows : *Al-bid'ah tariqah fi'l-din mukhtara'ah tudahi al-shari'ah yuqsad bi'l-suluk 'alayha ma yuqsad bi'l-tariqah al-shari'ah.*<sup>509</sup> However, Kamali argues that the resemblance between *bid'a* and the accepted standards within *Shari'a*, referred to in this definition, are merely 'academic,' implying that they are only nominal. This is because, generally, any *bid'ah* is seen to be violating any basic ethics of *Shari'a*. This definition also declares that any intention to introduce any form of *bid'a* is not through deliberate deviation from the accepted norm, within the context of *Shari'ah*. In the broadest sense, if the change presented by the *bid'a* generates some general benefits (*masalih*) to the community, and this was perceived to be the genuine aim of the innovator (*mubtadi'*), then it is an acceptable act. However, it is generally understood that there are rarely any positive intentions when introducing such *bid'a* innovations. Abu Ishaq Ibrahim Al-Shatibi elucidates this point in his work *al-i'tisam*, where he declares that an innovator is inclined to presuppose their own authority as the 'law provider,' to the extent that the objectives of the law are confined.<sup>510</sup>

Kamali defines two separate categories for the different forms of *bid'a*. The first form is genuine *bid'ah* (*al-bid'ah al-haqiqiyyah*) for which there is no justification to defend or support such acts that can be found within the Qur'an, Sunnah, or *ijma'*. There are also neither any precedents or positive approaches from learned opinions from theologians and/or jurists, hence this form of *bid'ah* is the 'true sense' of the word. The second category type of *bid'ah* is referred to as *al-bid'ah al-idafiyyah*

<sup>507</sup> Henderson, John, B., *The Construction of Orthodoxy and Heresy*, op.cit., p19. Also see Lewis, Bernard, 'Some Observations on the Significance of Heresy in the history of Islam,' *Studia Islamica*, 1, 1953, p52

<sup>508</sup> Kamali, Mohammad Hashim, *Freedom of Expression in Islam*, op.cit., p132

<sup>509</sup> Al-Shatibi, Abu Ishaq Ibrahim, *al-I'tisam*, Matba'at al-Manar, Cairo, 1332/1914 (also published by Dar al-Ma'rifah, Beirut, 1402/1982), Vol.I, p29.

<sup>510</sup> Al-Shatibi, Abu Ishaq Ibrahim, *al-I'tisam*, ibid., Vol.I, p50



(partial innovation), which has two separate aspects. One is very similar to the initial form of *bid'a*, as it includes acts that are unprecedented and impossible to defend. However, the second form covers the types of act which has authentic authoritative support to accept them within the 'norm.' This allows the situation to arise where "*al-bid'ah al-idafiyyah* is an ambivalent innovation which can be either accepted as part of the authoritative Sunnah or completely rejected, depending on how it is viewed."<sup>511</sup>

There are also two other, smaller forms, of *bid'ah*. The first is *al-bid'ah al-tarkiiyyah* which covers acts of abandoning some custom or traditional manner. An example would be the act of someone who either personally abandons, or who persuades others to abandon things that are held lawful within *Shari'a*. The other form of *bid'ah* is opposite to this type, and is entitled *al-bid'ah ghayr al-tarkiiyyah*. This would be the act of innovation that does not abandon, but makes an attempt to either add-to or change the existing *shari'a*, or promoting differing perspectives on how to interpret the law.<sup>512</sup>

In an extreme interpretation of *bid'a*, some Muslims suggest that it includes all practices, or religious attachments, that were not present within early Islam. They believe that elements such as the construction of minarets beside a mosque must be rejected, as they were not in existence during the life of the Prophet. However, this is not a common belief and the majority of Muslims interpret *bid'a* as the introduction of something new, if it specifically contradicts the very spirit of Islam.<sup>513</sup>

Imam Al-Shafi'i argued that the concept of 'good' innovation (*bid'a hasanah*) is an acceptable form. However, contrary to that belief, Ibn Taymiyyah rejected any division between 'good' or 'bad' innovations. He promoted the policy that *bid'a* was solely an evil act (*bid'a qabihah*).<sup>514</sup> Al-Shafi'i and his followers, defended their position with the understanding that when the innovation of *bid'a hasanah* becomes acceptable and is approved by the community as a whole, it no longer carries the negative implications of being pernicious or harmful. Contrary to this position, Ibn

<sup>511</sup> Kamali, Mohammad Hashim, op.cit., p132, and also see Al-Shatibi, Abu Ishaq Ibrahim, *al-I'tisam*, ibid., Vol.I, p54

<sup>512</sup> Kamali, Mohammad Hashim, ibid., p133, and also see Al-Shatibi, Abu Ishaq Ibrahim, *al-I'tisam*, ibid., Vol.I, p38

<sup>513</sup> *The Concise Encyclopaedia of Islam*, op. cit., p73

Taymiyyah counter argues such an acceptance, as he suggests that such ideas only developed in the third year of the *hijra*, 3AH/10AD, and that *bid'a* is, in any form, is both evil and anti-Islamic. He defends this argument by citing several *hadith* which, he claims, make this point very clear. Within his work *Iqtida' al-Sirat al-Mustaqim li-Mukhalafat Ashab al-Jahim*, Ibn Taymiyyah cites the three following *hadith* :

'All innovation (*bid'ah*) is misguided – *kulli bid'atin dalalah* '; 'Every novelty is an innovation – *kulli muhdathatin bid'ah* '; and ' The worst of things are the novel among them – *inna sharr al-umur muhdathatuha*.'<sup>515</sup>

The phrase *bid'a* is cited within the work of early theologians, as having been used by the Prophet himself. The Prophet is quoted as stating that "the worst things are those that are novelties; every novelty is an innovation; every innovation is an error and ever error leads to hell-fire."<sup>516</sup> Also within the *ahadith* collections, this expression from the Prophet is also recorded, as holding innovations to represent very negative connotations, in announcing the latter part of the phrase, that "every innovation is an error and every error leads to Hell-fire."<sup>517</sup>

Kamali makes the interesting observation that the examples Ibn Taymiyyah uses as the acts of *bid'ah*, mainly relate to rituals of sincere faith. The acts include the believers fasting on certain days throughout the year, any 'unauthorised' prayer (*al-salat al-muhdathah*) and engaging in festive celebrations other than the standard dates and occasions that are annually recognised.<sup>518</sup> Such a view that supports 'good' innovations to be accepted, is based on the case of precedent by 'Umar b. al-Khattab who is reported to have welcomed the prayer of *salat al-tarawih*, during Ramadan, and is cited as witnessing it by stating "*ni'mal-bid'ah* " (what an excellent *bid'ah*).<sup>519</sup>

In reference to this act, Ibn Taymiyyah argued that *salat al-tarawih*, was not actually an innovation by al-Khattab, as it had originated by the Prophet himself. Later on, following the incident, the Prophet did not perform the prayer regularly, because followers may then have taken it to be obligatory, thus Ibn Taymiyyah states that the

<sup>514</sup> Kamali, Mohammad Hashim, *Freedom of Expression in Islam*, op.cit., p136

<sup>515</sup> Ibn Taymiyyah, Taqi al-Din, *Iqtida' al-Sirat al-Mustaqim li-Mukhalafat Ashab al-Jahim*, annotated by Nasir b. 'Abd al-Karim al-'Aql, no publisher given, 1404/1984, Vol.I, p55, cited from Kamali, Mohammad Hashim, *Freedom of Expression in Islam*, op.cit., p136 and in footnote 49 on p163

<sup>516</sup> Lewis, B., *Islam in History*, op. cit., p283

<sup>517</sup> Henderson, John, B., op.cit., p19

<sup>518</sup> Kamali, Mohammad Hashim, *Freedom of Expression in Islam*, op.cit., p136

<sup>519</sup> Kamali, ibid., p136-137 Also see Henderson, John, B., op.cit., p19



act of al-Khattab, does not contradict the *hadith* that states 'All *bid'ah* is misguided.' Therefore, he concludes, al-Khattab must have used the word *bid'ah* in a linguistic form, in the sense of 'welcoming something back that had been forgotten,' as opposed to using *bid'ah* relating to acts of innovation violating *Shari'ah*, known as (*bid'ah shari'ah*).<sup>520</sup>

With the gradual advancement and development of Islam over time, the capacity of the *sharia*' has allowed the acceptance of *bid'a hasanah* - a 'good' innovation. This acknowledges the creations which do not offer or promote a contradiction to the religious principles. One example of this would be the acceptance and need for the building of a new floor space in the Grand Mosque in Mecca, as it purely permits much larger numbers of devout Muslims, on the *hajj* pilgrimage, to gain access for all present to be able to circumambulate the Ka'ba simultaneously.<sup>521</sup>

There is a definite distinction between the differing forms of *bid'a*, which include *bid'a mahmuda* (praiseworthy) and negative forms of *sayyi'a* (bad) or *madhmuma* (blameworthy). These forms have a legal basis of definition offered by Imam Al-Shafi'i's interpretation of *bid'a*, as any innovation which is identified as contrary to the Qur'an, *Sunna*, *ijma* or *athar* ("a tradition traced only to a Companion or a Follower") would be an erring innovation. Whereas, introducing new elements of acts opposed to the 'accepted norm, ' if these become accepted, they will be clearly interpreted as being praiseworthy - *bid'a mahmuda*.<sup>522</sup> Al-Shafi'i argued that there were elements of 'misguided innovation' (*al-bid'ah al-dalalah* ). However, he and his followers, also promoted very positive elements of innovations. One example can be seen in the work of the Shafi'i jurist 'Izz al-Din 'Abd al-Salam who took such an approach to the extent of promoting any 'beneficial' *bid'ah* to become obligatory. An option for this level of benefit included setting-up and running an Arabic language course. Other innovations are deemed as recommendable (*mandub*), which would include opening schools for a more general education for the community.<sup>523</sup>

<sup>520</sup> Kamali, Mohammad Hashim, *Freedom of Expression in Islam*, ibid., p137

<sup>521</sup> *The Concise Encyclopaedia of Islam* , op. cit., p73

<sup>522</sup> *The Encyclopaedia of Islam*, Volume I, 1960, p1199 also see Lewis, B., *Islam in History*, op. cit., p283-284

<sup>523</sup> Kamali, Mohammad Hashim, *Freedom of Expression in Islam*, op. cit., p137

Beyond the rejection of minarets, as mentioned above, other extreme elements of rejection includes such introductions as “tables, sieves, coffee and tobacco, printing presses and artillery, telephones, wireless and votes for women.”<sup>524</sup> The essence of these rejections could be based on the fact that these ‘new’ implementations of modern times in each contemporary date of their introduction, where overtly moving away from the established habits, customs and traditions of the life-style in early Islamic history. However, a certain level of *bid’a* is acceptable and understandable through natural changes in time, and the general development of technology. It is the persistent excess of actively offensive acts, when such new introductions are deemed to be held as a genuinely negative innovation.

As Henderson highlights, one form of *bid’a* that the more orthodox heresiographers observed to be especially dangerous and rather objectionable was that as referred to by the theological terminology of ‘*ghuluww*’ (‘excess’ or ‘exaggeration’)<sup>525</sup>, which is derived from the Arabic root of “to over-shoot, to go beyond the limit.”<sup>526</sup> It is argued that, up to a certain plateau, the Prophet accepted some level of differences and he is quoted as stating that “Difference of opinion in my community is an act of divine mercy.”<sup>527</sup> The main people accused and convicted of this form of *bid’a* were the *ghulat*, (singular, *ghali*) ‘the exaggerators,’ who

were the extremist Shi’ites who venerated their Imams to the point of deifying them or regarding them as divine incarnations, thus compromising the oneness of God and committing the cardinal sin of *shirk* (polytheism). So heinous was this and other forms of *ghuluww* that orthodox heresiographers sometimes excluded the *ghulat*, from the pale of Islam altogether.<sup>528</sup>

On the understanding of acceptable *bid’a hasanah* and *bid’a mahmuda* together with negative forms of *bid’a sayyi’a* and *bid’a madhmuma*, the interpretation of innovations are classified within the five categories [*ahkam*] of *Shari’ah*. With an approach of duties to the community [*fard kifaya*], certain *bid’a* are welcomed. These include the study of grammar, rhetoric and other related linguistic areas which promote an understanding of the *Qur’an* and the *Sunna*. Further to this, an

<sup>524</sup> *The Encyclopaedia of Islam*, Volume I, 1960, Ibid., p283

<sup>525</sup> Henderson, John, B., op.cit., p19.

<sup>526</sup> Lewis Lewis, B., *Islam in History*, op. cit., p284

<sup>527</sup> Ibid., p284 -285

<sup>528</sup> Lewis Lewis, B., *Islam in History*, op. cit., p284-285 and see Henderson, John, B., ibid., p19.



investigation of the authenticity, validity and reliability of those writers whose work is quoted as genuine traditions [ *al-djarh wa 'l-ta'dil* ] is accepted as a vital determination of strong and weak *ahadith*, the correct codification of laws and a stimulation for refutation of heretic sects.<sup>529</sup>

Unacceptable, even prohibited [*muharrama*], *bid'a* include doctrines imposed and propagated by opponents of believers in the community who follow the *Sunna* and their interpretation of the *Qur'an*. To oppose this very issue there are recommended [*manduba*] innovations which include the establishment of academic institutions and schools in order to promote Islam. Within this category, specific conditions are related to any unnecessary excess, with disapproved [*makruha*] *bid'a* which includes the decoration of mosques or any elaborate ornamentation of copies of the *Qur'an*. More peripherally, there are permitted [*mubaha*] *bid'a* which include pleasant food, drinks and clothing.<sup>530</sup>

Thus, clearly, *bid'a* has to be distinguished specifically from its purely meaning 'heresy.' Within certain contexts, it can reasonably be used with this meaning, but the two words are very different and bear no exact equivalence in their translation.<sup>531</sup> When *bid'a* includes matters which induce disagreements with the basis of the Prophet's offerings, suggestions and his established religious belief system, this can be interpreted as not a deliberate rebellious reaction to the Prophet, but having arisen due to an unfortunate confusion in the reasoning of what is acceptable.

Innovators, themselves, are referred to as *ahl al-bid'a* and *ahl al-ahwa*. Essentially, it is believed that an innovator [ *mubtadi'* ] introduces the *bid'a* with an unestablished basis without any acknowledgeable recognition with the foundations of Islam. Modern scientific inventions have been rejected by the most conservative, restrictive traditional Muslims, but in some parts of the Islamic belief system such modern scientific inventions are completely accepted quite freely. One example here, is the present economic status of Saudi Arabia, which is dependant upon the oil industry.

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<sup>529</sup> Kamali, Mohammad Hashim, *Freedom of Expression in Islam*, op.cit., p137. Also see *The Encyclopaedia of Islam*, Volume I, 1960, op. cit., p1199

<sup>530</sup> Ibid., p1199

<sup>531</sup> Ibid., p1199. Also see Lewis, B., *Islam in History*, op. cit., p284

The process of such an industry vastly utilises modern technology to obtain the very product.<sup>532</sup>

The Orthodox Sunni Muslims had an unquestionable inclination towards promoting their faith in the same manner, as their counterpart Christians did, portraying it as the pure and primary form that had remained unchanged since it's first days, hence it was "lacking any history of development."<sup>533</sup> Based on this understanding, all innovations were, simply by this definition, heretical. Within the Sunni Islam then association of connecting innovation with heresy was not only prompted by 'polemical requirements,' but also by the "dislike of change and novelty" that "goes back to pre-Islamic times when the accepted ideal was to follow exactly the time-honoured practice of the tribe or clan."<sup>534</sup>

This makes it far more apparent as the main reasons why "many Sunni apologists' condemnations of religious innovations are so absolute and unqualified, particularly those of the fideist Hanbalites "<sup>535</sup> Several examples can show this determination, which are beliefs seem to go one stage further than the similar based announcement concerning *bid'ah* by the Prophet Muhammad, as mentioned above. One example of this is from Ibn Qudama (d.1233) who argued that "every innovation is a heretical innovation, and every heretical innovation is an error"<sup>536</sup> and another comes from Ibn Batta (d.997), who declared that he was citing his quote from a saying of the Prophet, who had suggested that : "whoever honours an innovator contributes to the destruction of Islam."<sup>537</sup> It is also recorded that Ibn 'Asakir (1106-1176), the apologist within the Ash'arite belief followers, also promoted that there was no 'middle-ground' when considering the concept of innovation. It was a simple solution and a

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<sup>532</sup> *The Encyclopaedia of Islam*, Volume I, 1960, Ibid., p1199

<sup>533</sup> Henderson, *ibid.*, p87

<sup>534</sup> Henderson, *ibid.*, p87

<sup>535</sup> Henderson, *ibid.*, p87-p88. Fideist is defined as : "doctrine that knowledge depends on faith or revelation," Sykes, J.B. (Ed.), *The Concise Oxford Dictionary of Current English*, 1988, The Oxford University Press, Oxford, p360. And also as : "the belief that God and eternal, supernatural truths can be fully, or mostly, comprehended by faith, and not by reason alone," *The Wordsmyth Educational Dictionary-Thesaurus*, found on :

<http://www.wordsmyth.net/cgi-bin/search.cgi?matchent=fideist++&matchtype=exact>

<sup>536</sup> Henderson, *ibid.*, p88

<sup>537</sup> *Ibid.*, p88



very clear point to understand, that “There is no good superior to the Sunna, nor is there any evil worse than innovation.”<sup>538</sup>

An interesting and informative point is raised by Henderson, when comparing Sunna and *bid'a*, as he assesses the linkage between both the use of these terms, as well as their definitions in that : “Indeed, *sunna* (the beaten path or standard practice of the Prophet) and *bid'a* (innovation) were not only antithetical in a religious sense, but also antonyms in a linguistic sense.”<sup>539</sup>

While concerning the assessment of how sound and established that each theological ‘school of thought’ had perceived themselves to be, it can be noted that both the Ash’arites and Hanbalites defended their beliefs in that they should not be referred to as a particular *firqa* (sect), and far less to be considered as anything of an innovation. They argued, in defence, that they were, rather, “the continuation of the pristine condition of Islam.”<sup>540</sup> However, there was a fascinating difference of opinion presented by the more partisan groups considered to be a *firqa* (sect), which included the Shi’ites. They also portrayed their belief systems to have “existed from the beginning and never changed in essence,”<sup>541</sup> and this level of belief lead to the extent that the Shi’ites perceived the roots of their Imams traced back directly to the Prophet, which “was conceived as a proof of the primordality [*sic*] of Shi’ism.”<sup>542</sup>

Henderson notes that, because Sunni orthodoxy did not actually emerge before the end of the ninth century, this point was not to be admitted by the orthodox apologists and polemicists, because any observation of that factor would have worked against the defence of any legitimacy in the orthodox position. The form of defence promoted by supporters of “even such an innovative figure as the theologian al-Ash’ari endeavoured to minimise his originality and novelty to the greatest extent possible.”<sup>543</sup>

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<sup>538</sup> Henderson, *ibid.*, p88

<sup>539</sup> *Ibid.*, p88

<sup>540</sup> *Ibid.*, p88. Also see : Al-Azmeh, Aziz, ‘Orthodoxy and Hanbalite Fideism,’ in *Arabica*, 35, no publisher provided, 1988, p258 and p261

<sup>541</sup> Henderson, *ibid.*, p88. Also see: Halm, Heinz, *Shiism*, Translated by Janet Watson, Edinburgh University Press, Edinburgh, 1991, p2

<sup>542</sup> *Ibid.*, p88

<sup>543</sup> *Ibid.*, p88

The revelation of the Qur'an and God's message was believed to be full and complete, ending with the Prophet Muhammad. However, it is of interest to note that, as Henderson indicates :

the revelation was complete and final with Muhammad, the Seal of the Prophets, who defined once and for all the bounds of both orthodoxy and orthopraxy. But ironically, even the doctrine that Muhammad was the Seal of the Prophets was a later innovation in orthodox Sunni theology.<sup>544</sup>

Thus, with the change of time and the change in the Islamic belief system through the differing schools of thought, rejection and acceptance of *bid'a* is determined by the change of the communities opinions and *ijma'* [consensus]. Hypothetically,

*bid'a* of today may become the *Sunna* of tomorrow, opposition to which is, itself, *bid'a*. Moreover, since no machinery exists for the consultation or formulation of a universal *ijma'* for all Islam, there may be differing parts of the Islamic world and the dividing line between *Sunna* and *bid'a* may thus vary with place as well as time. Islam has, in fact, absorbed a great deal that was foreign to the religion of the Companions, sometimes in concession to new ideas, sometimes by way of compromise with the existing practices of the peoples to which it came.<sup>545</sup>

### 2.6.1 Classical Exegete's tafsir on bid'a.

#### Verse Al-Ahqâf, 46:9

قُلْ مَا كُنْتُ بِدْعًا مِّنَ الرُّسُلِ وَمَا أَدْرِي مَا يُفْعَلُ بِي وَلَا بِكُمْ إِنِّ أَتَّبِعُ إِلَّا  
مَا يُوحَىٰ إِلَيَّ وَمَا أَنَا إِلَّا نَذِيرٌ مُّبِينٌ ﴿٩﴾

Say: "I am no bringer of new-fangled doctrine among the apostles, nor do I know what will be done with me or with you. I follow. But that which is revealed to me by inspiration; I am but a Warner, open and clear."<sup>546</sup>

In his commentary on 46:9, Az-Zamakhshari states that *bid'a* can directly be translated to mean "innovator."<sup>547</sup>

Al-Baydawi argues that the correct interpretation of this verse is that the Prophet Muhammad is not an unprecedented Messenger whom preaches any innovative

<sup>544</sup> Henderson, *ibid.*, p88

<sup>545</sup> Lewis, B., *Islam in History*, op. cit., p284

<sup>546</sup> Abdullah Yusuf Ali, op. cit., Vol. III, p1368

<sup>547</sup> Al-Zamakhshari, *al-Kashshaf*, op.cit., Vol.4, p297



message, or that he claims to perform what other prophets have not yet performed.<sup>548</sup> On a similar view, Al-Suyuti states in his commentary that *bid'a* is used in this verse, emphasising that the verse is stating the Prophet's message: "that I am not the first messenger."<sup>549</sup> Al-Tabari also argues that the message of this verse is "I am not the first messenger" and that "there have been some prophets before me who called out the same of what I also preach."<sup>550</sup>

Al-Alusi presents a very similar interpretation of this verse, as he argues that in using *bid'a*, the genuine meaning of the verse is "I am not an innovator who devised what the previous prophets have not yet preached",<sup>551</sup> which is in reference to the call for monotheism and Allah's Oneness (*tawhid*).

Again, Ibn Kathir also mentions in his commentary, that the message of this verse should be read as the theme of: 'I am not the first messenger, who has ever come into this world. Rather, messengers came before me. Therefore I am not an unprecedented occurrence and I do not wish you all to reject me and doubt my message. Indeed, Allah has sent before me all the prophets to various nations.'<sup>552</sup> Ibn 'Abbas also presents the same interpretation of this verse, as is illustrated by the other classical exegetes. Ibn 'Abbas argues that the verse means "I am not the first Messenger, as there were some prophets before me."<sup>553</sup>

### Verse Âl-'Imrân, 3: 106

يَوْمَ تَبْيَضُّ وُجُوهٌ وَتَسْوَدُّ وُجُوهٌ فَأَمَّا الَّذِينَ اسْوَدَّتْ وُجُوهُهُمْ أَكَفَرْتُمْ  
بَعْدَ إِيمَانِكُمْ فَذُوقُوا الْعَذَابَ بِمَا كُنْتُمْ تَكْفُرُونَ ﴿١٠٦﴾

On the Day when some faces will be (lit up with) white, and some faces will be (in the gloom of) black; to those whose faces will be black, (will be said); "Did ye reject Faith after accepting it? Taste then the Penalty for rejecting Faith."<sup>554</sup>

<sup>548</sup> Baydawi, Abdallah Ibn Omer, 'Anwar al-Tanzil wa asrar al-ta'wil,' op.cit., Vol.2, p393

<sup>549</sup> al-Suyuti, Jalal al-Din Abdel Rahman Ibn Abu Bakr, *Ruh al-Ma'ani fi tafsir al-Qur'an al-'Azeem wa al-Sab' al-Mathani*, op.cit., Vol.6, p4

<sup>550</sup> Al-Tabari, *Jam'a al-Bayan 'an ta'wil ayat al-Quran*, op.cit., Vol.11, p275-276

<sup>551</sup> al-Alusi, Shihaboldin al-Sayyid Mahmoud, *al-Dur al-Manthur fi al-Tafsir al-Ma'thur*, op.cit., Vol.13, p166

<sup>552</sup> Ibn Kathir, 'Tafsir al-Quran al-'azeem,' op.cit., Vol.4, p139

<sup>553</sup> Ibn 'Abbas, 'Tanwir al-Miqbas min tafsir Ibn 'Abbas,' op.cit., p533

<sup>554</sup> Abdullah Yusuf Ali, op. cit., Vol. I, p150



In the classical exegetes commentaries on verse 3: 106, there are some references that include the various acts of 'unbelief,' ranging from: *bid'a*, apostasy, *kuf*r, hypocrites (*al-munafiqun*) and polytheism. This proves a fascinating insight into the breadth of how *tafsir* can relate to the many different aspects on so many different levels of 'unbelief,' moving from the general-to-the-specific.

For example, Ibn 'Abbas suggests that this verse promotes a prediction of what will occur to both believers and unbelievers. He states that the theme of the verse indicates that on the Day of the Resurrection, the faces of some people will shine with brightness and the faces of others will darken. It is to the latter that the Angels of the Hellfire will say: 'You have turned back to *kuf*r after your belief in Allah.'<sup>555</sup>

Al-Baydawi offers several possibilities for which group of people are being referred to, as having the darkened faces on the Day of Resurrection. He suggests that these people are either: 1; the Apostates. 2; The *ahl-al-kitab* (The People of the Book) who rejected the belief in the Prophet Muhammad, after they had believed in him before he was sent, or it could refer to 3; all disbelievers, in general.<sup>556</sup>

Al-Shawkani mentions in his commentary that this verse indicates the prediction that all people will be resurrected from their graves. He also offers various possibilities on those who will arise with darkened faces on that day. Al-Shawkani argues that will be either : 1; *ahl-al-kitab*, 2; the apostates, 3; the polytheists, 4; the hypocrites, or 4; the people of innovation (*ahl-al-bid'a*).<sup>557</sup>

Al-Tabari also presents three possible groups of people to be those being referred to as having their faces darkened on the day of resurrection: 1; Muslims who innovate (i.e., those who undertake *bid'a*), 2; Muslims who disbelieved by fighting amongst themselves, 3; Whoever reverts to disbelief after they had believed in al-Islam, or 4; The disbelievers or the apostates. Al-Tabari suggests that the term Belief ('*iman*) in

<sup>555</sup> Ibn 'Abbas, '*Tanwir al-Miqbas min tafsir Ibn 'Abbas*,' op.cit., p70

<sup>556</sup> Baydawi, Abdallah Ibn Omer, '*Anwar al-Tanzil wa asrar al-ta'wil*,' Vol I., op.cit., p174

<sup>557</sup> Al-Shawkani, , '*Fath al-Qadir: al-Jami' bayn fanni al-Riwaya wa al-Diraya min 'ilm al-tafsir*, Vol. I, op.cit., p465-466



this verse, points to the Covenant, to which people will have solemnly accepted and made their genuine commitment to.<sup>558</sup>

Az-Zamakhshari comments that the phrase used in this verse as: "Those who disbelieved" refers to *ahl-al-kitab*, because they disbelieved in the Prophet Muhammad after they had believed in him before he was sent, i. e. before his mission began. However, az-Zamakhshari mentions another *hadith* that supports the opinion that those being referred to in this verse are either the apostates or the people of innovations (*ahl-al-bid'a*), who are all full of selfish lust.<sup>559</sup>

Ibn Kathir suggests another view for interpreting this verse. He argues that this verse illustrates that on the Day of Resurrection, the faces of the followers of Sunnah and Jama'ah, i. e. (Sunni orthodoxy) will radiate with whiteness, and the faces of the followers of *Bid'a* (innovation) and division will be darkened. Ibn Kathir cites the opinion of Al-Hasan al-Basri, who presents another alternative suggestion, that those who are being referred to in this verse are the hypocrites (*al-munafiqun*).<sup>560</sup>

## 2.7 zindiq (زندىق)

"Anyone who, professing to be a Muslim, is really an unbeliever, or anyone who belongs to no religion."<sup>561</sup> Following this definition, an interesting point is made by Goldziher, who states that any conversion by a non-Muslim to another religion, other than Islam, could be accused of being a *zindiq* (زندىق), but is specifically not a *murtadd* (apostate). This point clarifies the difference in using the terms *zindiq* and *murtadd*. The latter translates as an 'apostate;' one who leaves Islam. The full definition of *murtadd* is covered below.

Goldziher also stated that it is possible for the *zindiq* 'offender' to avoid punishment by then embracing Islam, to genuinely convert and become a devout Muslim.<sup>562</sup> Used as the term for the 'heretic' is *zindiq*, which is an Arabic transliteration of a Persian

<sup>558</sup> There is also a reference to this Covenant that is mentioned in Q.7:172. Al-Tabari, *Jam'a al-Bayan 'an ta'wil ayat al-Quran*, Vol. 4, op.cit., p386-387

<sup>559</sup> Al-Zamakhshari, *al-Kashshaf*, op.cit., Vol. I, p399

<sup>560</sup> Ibn Kathir, '*Tafsir al-Quran al-'azeem*,' op.cit., Vol. I, p343

<sup>561</sup> *The Encyclopaedia of Islam*, Volume IV, 1978, p771

<sup>562</sup> Ibid., p771, also Goldhizer, *Muhammedanische Studien*, ii, 215f., English translation, ii, 199ff.

word that was initially used to particularize the Manicheans and other sects of dualists. However, “the term later comes to be applied to any extreme or seditious doctrine – to some forms of Sufi belief – or no belief at all.”<sup>563</sup> Hughes, in his work ‘*Dictionary of Islam*’, defines *zindiq* as

a term used to express a person as a hopeless state of infidelity. Some say the word is derived from the Persian *zan-din* (woman’s religion) while others assert that it is related to *zand* or *zend* which means ‘explanation’ (i.e. the explanation of the book of Zardusht or Zoroaster).<sup>564</sup>

This is equally explained in *The Concise Encyclopaedia of Islam*, as *zindiq* is derived “from the Persian *zand* ; - free interpretation, meaning ‘heresy’. A free thinker, atheist or heretic.”<sup>565</sup> The term was ‘borrowed’ from its use by the Iranian Sassanid administration, under the Persian ruler Bahram I (Varahran, 273/276).<sup>566</sup> The word *zindaq* is argued to have become ‘arabicized,’ having emerged from the Iranian society of *mawali Hamra*, based in Hira and Kufa. It appeared initially in 125/742 and was connected to the execution of Ja’d ibn Dirham and has also been discovered in the time between 167/783 and 170/186 during the official inquiry, or inquisition, which was arranged and undertaken by the ‘Abbasid caliph, and led by a specialised judge, entitled the Grand Inquisitor - ‘*arif* [expert<sup>567</sup>], or *Sahih al-Zanadiqa*.<sup>568</sup> At that time, during the stage of the court system’s inquiry, the poets Bashshar ibn Burd and Salih ibn ‘Abd al-Quddus were both executed, due to their court-proven accusations of disbelief and conviction of being *zandaqah* (زندقة).<sup>569</sup> Most of those who were “caught, condemned, beheaded and quartered” in the inquisition under the rule of al-Mahdi [775-785] and al-Hadi [785-786] were primarily Manichaeans.<sup>570</sup>

<sup>563</sup> Henderson, John, B., op.cit., p19-20. Also see Lewis, ‘Some Observations on the Significance of Heresy in the history of Islam,’ op.cit., p56.

<sup>564</sup> Hughes, *Dictionary of Islam*, op. cit., p713

<sup>565</sup> Cyril Glasse, *The Concise Encyclopaedia of Islam*, op. cit., p433. Also : “This word is of Iranian origin and apparently denoted those who adopted a deviant interpretation of the Zoroastrian scripture, the *Zand Avesta*,” B. Lewis, *Islam in History*, op. cit., p285

<sup>566</sup> H. A .R. Gibb and J. H. Kramers, *Shorter Encyclopaedia of Islam*, 1953, p659. Also see *The Concise Encyclopaedia of Islam*, Ibid., p433

<sup>567</sup> Glasse, *The Concise Encyclopaedia of Islam*, ibid., p433

<sup>568</sup> B. Lewis, *Islam in History*, op. cit., p286

<sup>569</sup> Gibb and Kramers, *Shorter Encyclopaedia of Islam*, op. cit., p659. Also see B. Lewis, *Islam in History*, Ibid., p286

<sup>570</sup> B. Lewis, Ibid., p286. Manichaeans were followers of Mani [215 - 276 AD], who was a founder of a ‘dualistic’ Gnostic sect, which believed in the ‘Lightness’ and ‘Darkness’ as the dual power to worship, *The Concise Encyclopaedia of Islam*, op. cit., p252



*zindak* has various forms which differ slightly in use, thus a distinctive definition of each form is required. In plural the term *zanadika* is used and in an 'abstract' form, the spellings differ to *zandaka* / *zandaqah*. The latter, *zandaka* / *zandaqah* is defined as "heresy, unbelief" and this word had an important emphasis and relevance to the "convert of the Manichaeans." in 982.<sup>571</sup>

Essentially, *zindak* and the other forms derived from it are terminology used in *shari'a* courts to describe the heretic whose written work and spoken teachings are considered as a danger to the state. Anyone convicted of this crime could potentially receive the death penalty, based on an interpretation of both the *Suras* 5 :33 and 26 : 48. The Maliki school of law states that it is useless to ask the convicted *zindak* to recant [*istitaba*]. However, diametrically opposed to this position, the Hanafi school of law are contrary to this position, in their *takfir* [the denunciation, or excommunication of an unbeliever<sup>572</sup>]. This is another example where there is a lack of consistency between two different Sunni schools of law, in their manner of dealing with a person's behaviour involving 'unbelief.' The Maliki school denies anyone accused of such behaviour to have the chance to recant or repent (*istitaba*), but the Hanafites allow for the accused to repent and return to Islam.

The term *zindiq* became widely accepted as a legal term and was used in one case against three famous contemporary writers, Ibn al-Rawandi, al-Tawhidi and al-Ma'arri who became known as "three *zanadika* of Islam."<sup>573</sup> However, this technical use of the term was only active within the literary circles, as on a general level it had lost its precision and the 'official' understanding and definition - which was used during the inquisition mentioned above. The understanding of when to use it, became a belief that a *zindiq* – or 'free-thinker' – was someone who had insufficient sincerity towards Islam and was an individual who lived the life-style as a 'believer', but led a clandestine life as an ascetic intellectual thinker; a questioner of Islam, with a polemic opposition to any genuine faith.

<sup>571</sup> *The Encyclopaedia of Islam*, Volume VI, p421

<sup>572</sup> B. Lewis, *Islam in History*, op. cit., p290. Also see Gibb and Kramers, *Shorter Encyclopaedia of Islam*, op. cit., p659

<sup>573</sup> *sabb al-rasul* - 'insults to the Prophet,' *Shorter Encyclopaedia of Islam*, Ibid., p659. There are three forms of *Sabb* (insults), which are categories of blasphemy. They will be defined and discussed in detail below. The three are *Sabb Allah* (blasphemy against God), *Sabb al-Rasul* (blaspheme against the Messenger) and *Sabb al-Nabi* (blasphemy against the Prophet).

It is also argued that the term gathered further evolution for its use with a politically characterised weight. It was considered a phrase which related to the broad category involving individuals and groups of heretics which imperiled the Islamic state. A very interesting point is that it was considered as the only crime which was systematically punished by the Prophet personally, utilising the death penalty, as the crime was considered *sabb al-rasul*.<sup>574</sup> There is excellent evidence to strengthen the argument that court's jurists created the reputation of *zandaka*, so that such an act could be understood to be an intellectual rebellion which insulted the Prophet's honour.<sup>575</sup>

The different *madhahib* (Islamic schools of law) had their own interpretations of the word *zindiq*, to define their own legal approach to such an act. The Hanbalis identified five different sects within *zanadika*, as stated by Khashish al-Nasa'i [d.253/867] in his *Istikama*. One sect, *mu'attila*, were believed to deny the creation of the world and saw the Creator to be a 'character,' worshipped as an idol. They believed that the world was an 'unstable, unbalanced order,' and was centered around the energy it created, in a mixture of the 'four elements'; land, sea, air and fire. The *manawiya*, who were also considered as Manichaeans, and the *mazdakiya* were considered 'dualists.' The '*abdakiya* were given the fascinating description as being "vegetarian Imami ascetics of Kufa."<sup>576</sup> The group of the *ruhaniya* were considered as ecstatic sects and were held to be 'free liberal thinkers' with a desire to remove themselves from the obligatory observances and laws, by uniting their souls with God.

On a legal basis, Ibn Hanbal, the founder of the Hanbali school of law, is recorded as having described Djahm as a *zindiq*. Djahm repeatedly defended his belief that the spirit (*ruh*) is an immaterial emanation and is, therefore, divine.<sup>577</sup> The Malikis, specifically in Spain and Morocco, set-up trials which dealt with cases involving *zandaka* accusations, "especially for 'insults to the Prophet' "<sup>578</sup> - which is the manifestation of *sabb al-rasul*, as described above. There is substantial and

<sup>574</sup> Ibid., p659

<sup>575</sup> Ibn Hadjar al-Haitami, *al-Sawa'ik al-muhrika fi 'l-radd 'ala ahl al-bida' wa 'l-zandaka*, Cairo, 1308AH. Also see Ibn Taimiya, *al-sarim al-maslul 'ala shatim al-rasul*, Haidarabad, 1322, p515 and p529

<sup>576</sup> Gibb and Kramers, *Shorter Encyclopaedia of Islam*, op. cit., p659

<sup>577</sup> Ibid., p659. Also see Ibn Hanbal, *Radd 'ala 'l-zanadika*, ed., University Istanbul, 1931

<sup>578</sup> *Shorter Encyclopaedia of Islam*, Ibid., p659.



substantive evidence of such cases, which includes the trial of Abu 'l-Khair at Cordova, during the reign of al-Hakam II. Another case involved Ibn Hatim al-Azdi at Toledo in 457/1064, and a later trial was based at Fas, against Ibn Zakur. On a very similar level, with a priority of hearing such cases - particularly during the Ottoman era - the Hanafi school of law rose *fatwas* against the Shi'i believers, which led to trials including the case against Kabid, in 934/1527.

It is of great interest to note here, that these cases involve the accusations against someone for being a *zindiq*, but they had undertaken the act of *sabb al-rasul* - 'insults to the Messenger (Prophet).' The interest arises when it becomes apparent that *sabb al-rasul* is clearly defined and categorised as a form of blasphemy in Islam. *Sabb al-rasul* is one of three other major forms of *sabb* (insults) in total, the other two being *Sabb Allah* (blasphemy against God) and *Sabb al-Nabi* (blasphemy against the Prophet). These terms will be defined under the section on 'Apostasy,' but the point to be made here is that this presents another obfuscation and confusion in between two very separate categories of the sins and crimes of 'unbelief.' Here, in these cases, *zindiq* is the 'label' given to someone who was accused of undertaking an act which clearly makes them a blasphemer. *Zindiq* and blasphemy might be similar, but they hold very different legal penalties.

Beyond the legal perception of *zandaka*, theologians considered that the Mu'tazilis believed in the amorous devotion to Allah, and obliterated the obligatory rules and similar acts, as mentioned above. This induced the imposition of *ibaha* of the Khurramiya. Al-Ghazzali defined this belief as a tendency inclined towards atheism.<sup>579</sup>

The Sufis, who are considered to be a separate group away from what is understood to be the 'normality' of belief, were persecuted and legally tried against for *zanadika*, due to their theological doctrine of 'divine love.' In 262AH/875AD there was a trial against Nuri and a similar case ended in the execution of al-Hallaj. Al-Hallaj was executed for something he, himself, recognised "in a curious psychological analysis that on a threshold of transforming union, mysticism obtains a feeling of identity with

<sup>579</sup> *Shorter Encyclopaedia of Islam*, Ibid., p659. Also see : Ghazzali, *faisal al-tafrika bain al-Islam wa 'l-zandaka*, Ed. Kabbani, p31, pp54-55

God, which is *zandaka*.”<sup>580</sup> Moderate Shi’a describe those who are considered as ‘extremist’ Shi’a as *zanadika* and use this term for any “emanations that give union with the divine (*da’wa ila ‘l-rubiya* ).<sup>581</sup>

To emphasise how blurred and indistinct the definitions of the terms that represent ‘unbelief’ can become, this also become apparent when the concept of heresy (*zandaqah*) within Islam is parallel to blasphemy, as both are covered in literature covering disbelief (*kufr*). In a general reference to heresy it relates to those who are considered as atheists (*zanadiqah*; single as *zindiq*).<sup>582</sup> Thus, the *zanadiqah* are those who outwardly proclaim their belief in Islam, but who actually – similar to the behaviour of the ‘hypocrites’ (*munaḥiqun*) during the life time of the Prophet Mohammad – hide their inner disbelief, while spreading the faith along with genuine devout believers.<sup>583</sup>

However the main point of interest that Kamali raises is that the definition of heresy (*zandaqah*) has never been precise, in fact it has always remained uncertain. There are many different meanings of both *zandaqah* and *zanadiqah*, including the expression of disrespect and contempt (*al-tahattuk wa’l-istihtar*) on the established religious values of Islam, or adherence to other belief systems, such as the Magian and Manichean faiths and the more blatant agnosticism. Kamali argues that, historically, the terms have been used in reference towards those who secretly practice the Mani and Mazdak beliefs, claiming to be Muslims in public. This was the initial use of the word, before its further developments during the latter half of the second century of the AH Islamic calendar. “The word was loosely used to describe people who believed in their older religions, but who ostensibly professed Islam for self-aggrandisement and material gain.”<sup>584</sup>

*Zanadiqah* was also used to refer to those who doubted the sincerity and truth of the established religion as they declared the supremacy of reason in broader spheres. It,

<sup>580</sup> *Shorter Encyclopaedia of Islam*, Ibid., p660.

<sup>581</sup> Ibid., p660

<sup>582</sup> Kamali, Mohammad Hashim, *Freedom of Expression in Islam*, op.cit., p330

<sup>583</sup> Kamali, Mohammad Hashim, Ibid., p221. Also see al-Zuhayli, Wahbah, *al-Fiqh al-Islami wa Adillatuhu*, 8 vols., third edition, Dar al-Fikr, Damascus, 1409 / 1989, vol VI,

<sup>584</sup> Amin, Ahmad, *Fajr al-Islam*, 14<sup>th</sup> edition, Maktabah al-Nahdah al-Misriyya, Cairo, 1986, p154-157, cited by Kamali, Mohammad Hashim, Ibid., p221-p222



more obviously, was the label on those who openly propagated disbelief, publicly drank wine and promoted immoral pastimes, while being derisive on all religions. It particularly was the word associated to those believed in the eternity of the temporal world (*dawam al-dahr*), who mainly were followers of Disan, Mani and Mazdak beliefs, who perceived that light and dark were the basic nature of creation and that the cosmos was derived. Interestingly enough, the Mazdak propagated the hypothesis that both women and land were the common property of all.<sup>585</sup>

To summarise the entire uncertainty in defining the words *zandaqah* (heresy), *kufr* (disbelief), *Sabb Allah* (blasphemy against God), *Sabb al-Rasul* (blaspheme against the Messenger) and *Sabb al-Nabi* (blaspheme against the Prophet), together with the lack of any clear separation between them as distinct concepts, this can be provided in the definition of blasphemy in *The Encyclopedia of Religion*.

From the viewpoint of Islamic law, blasphemy may be defined as any verbal expression that gives grounds for suspicion of apostasy (*riddah*). In theological terms, blasphemy often overlaps with infidelity (*kufr*) which is the deliberate rejection of God and revelation. In this sense, expressing religious opinions at variance with standard Islamic views could easily be looked upon as blasphemous. Blasphemy can also be seen as the equivalent of heresy (*zandaqah*) .....Thus, in describing the Islamic concept of blasphemy, it is necessary to include not only insulting language directed to God, the Prophet and the revelation, but also theological positions and even mystical aphorisms that have come under suspicion.<sup>586</sup>

Having accepted this, it is still taken for granted, when considering the variety of the acts involved, such as the covert plots against the authorities, that there has always been a very powerful stance on the applicable punishments against a *zindiq* (heretic).<sup>587</sup>

<sup>585</sup> Kamali, Mohammad Hashim, Ibid., p222. Also see : Al-Bahnasawi, Salim, *Al-Hukm wa Qadiyyat Takfir al-Muslim*, third edition, Dar al-Buhuth al-'Ilmiyyah, Kuwait, 1405/1985, p373

<sup>586</sup> Ernst, Carl, 'Blasphemy : The Islamic Concept' in *The Encyclopedia of Religion*, Macmillan Publishing Co., New York, 1987, Vol.II, p242-243. Also see Kamali, Mohammad Hashim, Ibid., p222

<sup>587</sup> Kamali, Mohammad Hashim, Ibid., p221

## 2.8 *ilhad* (الحد) and *mulhid* (ملحد)

### *ilhad* (الحد)

What becomes very apparent is the close connection between the terms used within this field of ‘disbelief’ in Islam, which can be seen in what both Lewis and Henderson acknowledge, in that :

A word more or less synonymous with *zindiq* in its later, more generalised usage is *ilhad*, ‘originally meaning deviation from the path’ but later applied to ‘the man who rejects all religion, the atheist, materialist, or rationalist.’<sup>588</sup>

This word literally translates as ‘deviation from the path.’<sup>589</sup> It also relates to heresy : “Heretics are called *malahidah*.”<sup>590</sup> The Encyclopaedia further explains that the term ‘religion’ has been interpreted such that it signifies the ability and act of an individual binding themselves to God and “this cannot be done if the apprehension of God is false or incorrect.” There is clearly a margin to belief and any doctrine which can be broad or narrow, thus it can be either peripheral or essential. If the deviation from a true apprehension is very broad, the practice of religion becomes inoperative.<sup>591</sup>

The definition of ‘Right Belief’ is derived from the Greek word ‘*orthodoxia*’ and it is argued that orthodoxy has two specific forms : orthodoxy within a particular religion and orthodoxy in the relationship of religions directly to God. The practical implementation of faith on a daily basis, or orthopraxy, such as the daily *salat*, is explained further, under the definitions of the terms *ridda* and *murtadd*, in the following pages. To establish orthodox elaboration of Divine revelation, it is an essential necessity to engage “rigorous and divinely blessed examination of the contents of revelation (*ijtihad*).”<sup>592</sup> This must be confirmed by consensus within the community (*ijma*) thus the development of differing schools of law (*madhhab*) and jurisprudence (*fiqh*).

<sup>588</sup> Henderson, John, B., *ibid.*, p20. Also see Lewis, ‘Some Observations on the Significance of Heresy in the history of Islam,’ *op.cit.*, p56.

<sup>589</sup> B. Lewis, *Islam in History*, *op. cit.*, p287. Also see *The Concise Encyclopaedia of Islam*, *op. cit.* p183

<sup>590</sup> *The Concise Encyclopaedia of Islam*, *Ibid*, p183

<sup>591</sup> *Ibid.*, p183

<sup>592</sup> *Ibid.*, p183



Mohammad Asad, in his work *The Message of the Qur'an : Translated and Explained*, translates the Qura'nic verse *Al-Hajj*, 22, verse 25 as :

Behold, as for those who are bent on denying the truth and bar (others) from the path of God and from the Inviolable House of Worship which We have set up for all people alike – (both) those who dwell there and those who come from abroad – and all who seek to profane it by (deliberate) evildoing: (all) such shall We cause to taste grievous suffering (in the life to come).[ *Al-Hajj*, 22:25]<sup>593</sup>

Asad argues that this part of the verse 'and all who seek to profane it' translates literally as "who aim therein at a division from the right course (*ilhadd*).” He defines *ilhadd* as “a term that circumscribes every perversion of religious tenets.”<sup>594</sup>

Asad also presents a report that relates to the meaning of this verse that, according to Ibn 'Abbas, quoted by Ibn Hisham,<sup>595</sup> this verse is believed to have been revealed towards the end of 6H, the sixth year of the Hejira. At this time, the pagan Quraysh openly refused to accept any entrance in to Mecca of the Prophet and his followers, to undertake their pilgrimage from Medina. They could not gain any access to the sanctuary of the Ka'ba (referred to in the verse as the Inviolable House of Worship). However, Asad states that whether this report is historically correct or not, as there is no documented evidence of proof, the intention of the verse is not limited to a historical event alone. It relates to any prevention, either physical or through 'intellectual seduction' of such refusal to allow any pilgrimage to the symbolic centre of any faith, or attempting to destroy the faith's sanctity and grace in the face of the believers.<sup>596</sup>

Also, another relevant reference to *Ilhadd* in the Qur'an can be found, following the commentary by Sheikh-ul-Islam Maulana Shabbir Ahmed Usmani on the verse *Al-A'raf*, 7:180, which is translated by Abdullah Yusuf Ali as:

<sup>593</sup> Mohammad Asad, in *The Message of the Qur'an*, op.cit., p508; Qur'an; *Al-Hajj*, 22:25

<sup>594</sup> Mohammad Asad, in *The Message of the Qur'an*, Ibid., footnote 32, p508. Also see : *Fiqh\_us\_Sunnah*, Serial number 1224, *Pilgrimage cities and Mosques: Sacred precincts: Prohibition of profane acts*, found on e:\islamica\lawbase\lawbase.tex, on CD Rom *islamica : Digital Library of Islamic Software*, Islamic Computing Centre, London, [ [www.ummah.org/icc](http://www.ummah.org/icc) ].

<sup>595</sup> Full name: Shaikh Abu Muhammad 'Abd al-Malik ibn Hisham Ahmad, see Mirza Bashir-ud-Din Mahmud, *The Holy Quran with English Translation and Commentary*, 1947, Sadr Anjuman Ahmadiyya, Qadian, India, Volume I, pM

<sup>596</sup> Mohammad Asad, in *The Message of the Qur'an*, op.cit., footnote 33, p508-509

The most beautiful names belong to Allah: so call on Him by them; but shun such men as use profanity in His names: for what they do, they will soon be requited. (*Al-A'raf*, 7:180)<sup>597</sup>

The commentary by Maulana Shabbir Ahmed Usmani assesses the relationship of this verse to the acts of *Ilhad* by highlighting the theme it portrays:

In this verse Muslims are warned of the destructive end of the heedless fellows. They are instructed not to yield to heedlessness. The greatest thing to eradicate the heedlessness is the Remembrance of Allah. So the Muslims should call on Him with His good Names and Attributes. The Muslims should cut off from those people who follow crooked way in the Names of Allah. They will be dealt with according to their deeds. *Ilhad in the Names of Allah is that one may take such names of Allah, which Shari'ah has not allowed and which are not befitting His Divine Glory and Honour. Ilhad is where one may apply the Names of Allah on something other than Allah in its original sense, or apply the Special Names of Allah on something other than Allah..... Allah is Rahman, now this name is specially reserved for Allah. Similarly, loose interpretation of Allah's Names is also Ilhad.*

Hazrat Shah Sahib says: "Allah has told you about His attributes, hence describe them while glorifying Him, so that He may turn towards you. And do not follow crooked way; crooked way is that such names of Allah are described which He has not told us as Allah is Great and not Long or Tall, Allah is Eternal and not Antiquated or Old. Using His Names in magic is also crookedness (*Ilhad*), or perversion, or heresy. Such men will get their compensation-good or bad-but they will not attain His nearness."<sup>598</sup> (Italics added for emphasis).

<sup>597</sup> Ali, Abdullah Yusuf, *The Holy Qur'an : Text, Translation and Commentary*, 1969, Sh. Muhammad Ashraf, Kashmiri Bazar, Lahore, Pakistan, Volume One, p396. In offering examples of such 'beautiful names' for God, Abdullah Yusuf Ali refers to those that can be used in worship: "we can use the most beautiful names we can think of, to express His attributes. There are hundreds of such attributes. In the opening Sura, we have these indicated in a few comprehensive words such as *Rahman* (most Gracious), *Rahim* (Most Merciful), *Rabbu-ul-'alamin* (Cherisher and Sustainer of the worlds)" Ali, Abdullah Yusuf, *The Holy Qur'an*, Volume One in footnote 1154 on p396, and also that "These Beautiful Names of God are many. For *tasbeeh* purposes a list of 99 is made out in Hadith literature: that in Tirmizi is considered authoritative," Ali, Abdullah Yusuf, *The Holy Qur'an*, Volume Two in footnote 2322 to verse 17:110, on p726

<sup>598</sup> The translation of this commentary is taken from the Urdu translation by Shah Abdul Qadir Sahib *Mohizul Qur'an*, found on *Tafseer-e-Usmani* e:\islamica\tafseer\uthman.tex, on CD Rom *islamica* : Digital Library of Islamic Software, Islamic Computing Centre, London, [ [www.ummah.org/icc](http://www.ummah.org/icc) ].



### 2.8.1 Classical Exegete's *tafsir* on *ilhad*.

#### Verse *Al-A'râf*, 7:180

وَلِلَّهِ الْأَسْمَاءُ الْحُسْنَىٰ فَادْعُوهُ بِهَا وَذَرُوا الَّذِينَ يُلْحِدُونَ فِي أَسْمَائِهِ ۚ

سَيُجْزَوْنَ مَا كَانُوا يَعْمَلُونَ ﴿١٨٠﴾

The most beautiful names belong to Allâh: so call on Him by them, but shun such men as use profanity in His names: for what they do, they will soon be requited.<sup>599</sup>

In his commentary on 7:180, az-Zamakhshari argues that *ilhad* in this verse, is used to mean a person “deviating from the right course and the straight path” by belying Allah’s names.<sup>600</sup> Also al-Baydawi makes a similar comment as that made by al-Zamakhshari, by interpreting *ilhad* in the verse to with its the literal meaning which, in this context, would represent someone “digressing from the straight path.”<sup>601</sup>

Al-Suyuti mentions in his commentary that, according to a *hadith* attributed to Ibn ‘Abbas, *ilhad* means “belying” but also means “by falsely including others with Allah in his homes. It also means polytheism.”<sup>602</sup> Therefore, this interpretation can certainly link the meaning of *ilhad* with that of *shirk*.

In his commentary, Al-Tabari mentions various definitions of *ilhad*, which include “deviating; associating others with Allah in His Divinity, and belying.” Al-Tabari added to these different meanings, with the relevance that *ilhad* holds in its linguistic meaning (i.e deviating), which can be extended to include “any digression.”<sup>603</sup>

Al-Alusi also refers to *ilhad* as meaning ‘deviation and digressing’, but he also adds an interesting alternative meaning, as he mentions that it can also be understood to represent: “disputing, and to follow one’s impulse.”<sup>604</sup>

<sup>599</sup> Abdullah Yusuf Ali, op. cit., Vol. I, p396

<sup>600</sup> Al-Zamakhshari, *al-Kashshaf*, op.cit., Vol.2, p180

<sup>601</sup> Baydawi, Abdallah Ibn Omer, ‘*Anwar al-Tanzil wa asrar al-ta’wil*,’ op.cit., Vol.I, p368

<sup>602</sup> al-Suyuti, Jalal al-Din Abdel Rahman Ibn Abu Bakr, *Ruh al-Ma’ani fi tafsir al-Qur’an al-‘Azeem wa al-Sab’ al-Mathani*, op.cit., Vol.3, p271-272

<sup>603</sup> Al-Tabari, *Jam’a al-Bayan ‘an ta’wil ayat al-Quran*, op.cit., Vol.6, p132

<sup>604</sup> al-Alusi, Shihaboldin al-Sayyid Mahmoud, *al-Dur al-Manthur fi al-Tafsir al-Ma’thur*, op.cit., Vol.5, p113



Ibn Kathir also suggests that *ilhad* means “belying Allah’s name by associating others with Allah in His Name,”<sup>605</sup> which again, creates a link with *shirk*. He also argues that *ilhad* means: “deviation, wickedness, injustice and straying.”<sup>606</sup> With a fuller explanation in the use of *ilhad*, Ibn Kathir presents details for the use of *ilhad* when it is used to describe the hole-within-the-hold of a Muslim grave. In this meaning, it represents the section of the grave where the body is placed, in a hole built through the wall of the main section of the grave that is initially dug out. The body is placed pointing towards Qiblah, so *ilhad* refers to the body having technically deviated away from the main section of the grave.<sup>607</sup>

In his commentary to this verse, Ibn ‘Abbas defines *ilhad* as the act of: “Denying Allah’s Names and Attributes,” while stating that it can also mean the behaviour of a person who is “inclined to not admit Allah’s Names and Attributes, or confusing Allah’s Names with some other idols’ names.”<sup>608</sup>

### Verse An-Nahl, 16:103

وَلَقَدْ نَعْلَمُ أَنَّهُمْ يَقُولُونَ إِنَّمَا يُعَلِّمُهُ بَشَرٌ لِّسَانُ الَّذِي يُلْحِدُونَ إِلَيْهِ  
أَعْجَمِيٌّ وَهَذَا لِسَانٌ عَرَبِيٌّ مُبِينٌ ﴿١٠٣﴾

We know indeed that they say: “It is a man that teaches him.”  
The tongue of him they wickedly point to is notably foreign,  
while this (*the Qur’ân*) is Arabic, pure and clear.<sup>609</sup>

In his commentary on 16:103 az-Zamakhshari states that in this verse, *ilhad* technically means “deviation,” so leading from this, a *mulhid* is therefore a person who “deviates their belief from the righteous religions.”<sup>610</sup> This makes an interesting point, as it enables there to be a link between the definition of the two words *ilhad* and *mulhid*. Al-Baydawi mentions that the meaning of *ilhad* is derived from the linguistic meaning, as in the hole-within-the-grave, as was mentioned by Ibn Kathir in his

<sup>605</sup> Ibn Kathir, ‘*Tafsir al-Quran al-‘azeem*,’ op.cit., Vol.2, p248

<sup>606</sup> Ibn Kathir, Ibid., Vol.2, p248

<sup>607</sup> Ibid., Vol.2, p248

<sup>608</sup> Ibn ‘Abbas, ‘*Tanwir al-Miqbas min tafsir Ibn ‘Abbas*,’ op.cit., p185

<sup>609</sup> Abdullah Yusuf Ali, op. cit., Vol. II, p684

<sup>610</sup> Al-Zamakhshari, *al-Kashshaf*, op.cit., Vol.2, p635



commentary on verse 7:180. Al-Baydawi therefore emphasises that it *ilhad* refers to “deviating from a straight course.”<sup>611</sup>

Al-Tabari suggests in his commentary, that *ilhad* can be defined as meaning “to oppose, resist and contradict, hence to deviate and to digress.”<sup>612</sup> Al-Alusi defines *ilhad* with a strong emphasis of its theological meaning, as he defines it as the act of someone who will deliberately “transgress the ordained limits.”<sup>613</sup> Ibn ‘Abbas defines *ilhad* to include “deviating and distortedly confusing” the information that is passed on, when related to religious matters, which is either done deliberate through confusion when trying to understand these matter.<sup>614</sup>

In their commentaries on verse 16:103, neither al-Suyuti<sup>615</sup> or Ibn Kathir<sup>616</sup> offer any suggestions or information that relates to *ilhad*.

### Verse Al-Hajj, 22:25

إِنَّ الَّذِينَ كَفَرُوا وَيَصُدُّونَ عَن سَبِيلِ اللَّهِ وَالْمَسْجِدِ  
الْحَرَامِ الَّذِي جَعَلْنَاهُ لِلنَّاسِ سَوَاءً الْعَاكِفُ فِيهِ وَالْبَادِ وَمَن  
يُرد فِيهِ بِالْحَادِ بِظُلْمٍ نُّذِقْهُ مِن عَذَابٍ أَلِيمٍ ﴿٢٥﴾

As to those who have rejected (Allâh), and would keep back (men from the Way of Allâh, and from the Sacred Mosque, (*Al-Masjid-al-Harâm*, at Makkah), which we have made (open) to (all) men – equal is the dweller there and the visitor from the country – and any whose purpose therein is profanity or wrong-doing<sup>617</sup> – them will We cause to taste of a most grievous Penalty.<sup>618</sup>

<sup>611</sup> Baydawi, Abdallah Ibn Omer, ‘*Anwar al-Tanzil wa asrar al-ta’wil*,’ op.cit., Vol.I, p557

<sup>612</sup> Al-Tabari, *Jam’a al-Bayan ‘an ta’wil ayat al-Quran*, op.cit., Vol.7, p650

<sup>613</sup> al-Alusi, Shihaboldin al-Sayyid Mahmoud, *al-Dur al-Manthur fi al-Tafsir al-Ma’thur*, op.cit., Vol.7, p469

<sup>614</sup> Ibn ‘Abbas, ‘*Tanwir al-Miqbas min tafsir Ibn ‘Abbas*,’ op.cit., p293

<sup>615</sup> al-Suyuti, Jalal al-Din Abdel Rahman Ibn Abu Bakr, *Ruh al-Ma’ani fi tafsir al-Qur’an al-‘Azeem wa al-Sab’ al-Mathani*, op.cit., Vol.4, p247-248

<sup>616</sup> Ibn Kathir, ‘*Tafsir al-Quran al-‘azeem*,’ op.cit., Vol.2, p539

<sup>617</sup> Yusuf Ali mentions that, of such wrong-doings in the Mosque: “All these were enormities of which the Pagan clique in power in Mecca before and during the Hijrat, were guilty,” see Abdullah Yusuf Ali, op. cit., Vol. II, in footnote 2796 on p856

<sup>618</sup> Abdullah Yusuf Ali, op. cit., Vol. II, p856



In his commentary on 22:25, Az-Zamakhshari states that in this verse *ilhad* means the “intentional deviation from the straight path.”<sup>619</sup> Al-Baydawi states exactly the same in his own commentary; when he mentions that that *ilhad* is “deviation from the straight path”<sup>620</sup>

Al-Suyuti actually presents several different definitions, to illustrate the various meanings of *ilhad*. He five alternative options, by suggesting that *ilhad* represents – 1; the deviation from Islam, 2; Worshipping others, rather than just Allah, this is according to a *hadith* attributed to Mujahid, 3; to make it lawful/permissible (*halal*) what Allah has prohibited (*haram*), 4; hoarding food in Mecca and 5; Polytheism<sup>621</sup>

In a similar fashion, Al-Tabari also reported several meanings as a definition for *ilhad*. His four suggestions emphasis the same factors that were put forwarded by al-Suyuti. Al-Tabari offers *ilhad* as being : 1; deviating by worshipping others than Allah, 2; Transgressing, by intentionally allowing/permitting (making something *halal* that Allah has prohibited *haram*, 3; Committing evil deeds in Mecca or, as al-Suyuti suggested, hoarding food in Mecca, and 4; generally undertaking any evil acts and deeds.<sup>622</sup>

Al-Alusi makes a much broader definition of *ilhad* in his commentary of this verse. He presents two different meanings of *ilhad* –1; swerving/deflecting from moral integrity and righteousness and 2; that the meaning if *ilhad* is general, to include evil acts and deeds, as it is a general deviation away from the Right path. Al-Alusi makes reference to what other commentators, such as al-Tabari and al-Suyuti have used, when such as *ilhad* tocan mean the hoarding of food supply in Mecca. Finally, as was suggested by what al-Suyuti, Al-Alusi also declared *ilhad* as being an applicable term that can be used in reference for polytheism.<sup>623</sup>

Ibn Kathir reported a hadith attributed to Ibn ‘Abbas, where he stated that *ilhad* is “the evil action of polytheism – *shirk*; and allowing or permitting what is *haram*.” Ibn

<sup>619</sup> Al-Zamakhshari, *al-Kashshaf*, op.cit., Vol.3, p151

<sup>620</sup> Baydawi, Abdallah Ibn Omer, ‘*Anwar al-Tanzil wa asrar al-ta’wil*,’ op.cit., Vol.2, p87

<sup>621</sup> al-Suyuti, Jalal al-Din Abdel Rahman Ibn Abu Bakr, *Ruh al-Ma’ani fi tafsir al-Qur’an al-‘Azeem wa al-Sab’ al-Mathani*, op.cit., Vol.4, p633-635

<sup>622</sup> Al-Tabari, *Jam’a al-Bayan ‘an ta’wil ayat al-Quran*, op.cit., Vol.9, p130-132



Kathir also reported that Mujahid referred to *ilhad* as “committing some evil act in Mecca,” or, as according to others, it would be used for “hoarding goods in Mecca.”<sup>624</sup>

Ibn ‘Abbas has not made any reference towards, nor any mention of, *ilhad* in his commentary on this verse, 22:25.<sup>625</sup>

### Verse Fussilat, 41:40

إِنَّ الَّذِينَ يُلْحِدُونَ فِي آيَاتِنَا لَا يَخْفَوْنَ عَلَيْنَا أَفَمَنْ يُلْقَى فِي النَّارِ خَيْرٌ  
أَمْ مَنْ يَأْتِي ءَامِنًا يَوْمَ الْقِيَمَةِ أَعْمَلُوا مَا شِئْتُمْ إِنَّهُ بِمَا تَعْمَلُونَ بَصِيرٌ



Those who pervert the Truth in Our Signs<sup>626</sup> (Ayât) are not hidden from Us. Which is better? – he that is cast into the Fire, or he that comes safe through, on the Day of Judgement? Do what ye will: Verily He is Seeth (clearly) all what you do.<sup>627</sup>

In his commentary on 41:40, Az-Zamakhshari states that, in general, *ilhad* is “deviating from righteousness,” but in this verse’s context it refers to the act of “deviating, in the sense of intentionally distorting and misinterpreting the Qur’an.”<sup>628</sup> Al-Baydawi argues that *ilhad* in this verse means “deviating from righteousness”<sup>629</sup> Al-Suyuti mentions the sayings from both Mujahid and Ibn ‘Abbas, where *ilhad* is referred to as “putting words into their improper context, or presenting erroneous interpretations.” Al-Suyuti also mentions that *ilhad* can mean “belying,” as has already been defined by other commentators, in other verses.<sup>630</sup>

Al-Tabari argues that *ilhad*, in this verse, means: “opposing and belying in regard to Allah’s verses,” and that it also means: “resistance and opposition, disbelief,

<sup>623</sup> al-Alusi, Shihaboldin al-Sayyid Mahmud, *al-Dur al-Manthur fi al-Tafsir al-Ma'thur*, op.cit., Vol.9, p134

<sup>624</sup> Ibn Kathir, *Tafsir al-Quran al-'azeem*, op.cit., Vol.3, p203

<sup>625</sup> Ibn ‘Abbas, *Tanwir al-Miqbas min tafsir Ibn ‘Abbas*, op.cit., p351

<sup>626</sup> Yusuf Ali explains this phase as: “*Pervert the Truth in Our Signs*: either by corrupting the scriptures or turning them to false and selfish uses [*sic*]; or by neglecting the Signs of God in nature around them, or silencing His voice in their own conscience,” (Italics from original text), see Abdullah Yusuf Ali, op.cit., Vol. III, in footnote 4512 on p1298

<sup>627</sup> Abdullah Yusuf Ali, op. cit., Vol. III, p1298

<sup>628</sup> Al-Zamakhshari, *al-Kashshaf*, op.cit., Vol. 4, p201

<sup>629</sup> Baydawi, Abdallah Ibn Omer, *Anwar al-Tanzil wa asrar al-ta'wil*, op.cit., Vol.3, p354



polytheism and to distort or alter Allah's words"<sup>631</sup> Al-Alusi also states a similar point, that *ilhad* means "deviation in interpreting the Qur'anic verses from their proper meaning." In addition, similar to what al-Tabari explained, al-Alusi mentioned that according to Ibn 'Abbas, it can also mean "giving words their improper meaning." Again, as also stated by Qataddah, *ilhad* can mean "belying."<sup>632</sup>

Ibn Kathir also cites Ibn 'Abbas, with reference to *ilhad* as meaning "putting words into their inadequate context." Just as al-Alusi did, Ibn Kathir also makes reference to Qataddah, who argued that *ilhad* can be used to mean a person's "disbelief and obstinate behaviour."<sup>633</sup> Ibn 'Abbas suggests another interesting interpretation of *ilhad* in this verse, declaring that can means the act of "denying both Muhammad's Prophethood and the Qur'an."<sup>634</sup>

### *mulhid* (ملحد)

*mulhid* (ملحد) can be defined as "An infidel: 'One who has deviated, or turned aside from the truth.'"<sup>635</sup> This term is used to indicate the accused as a "deviator, apostate, heretic, atheist."<sup>636</sup> The religious interpretation of the term is derived from the words essential roots of 'l-h-d' which translates the meaning of "to incline, to deviate."<sup>637</sup> The Encyclopaedia of Islam states that there is no substantive evidence of any pre-Islamic use of the word within in any religious context. Thus, the Islamic use of this word is derived from certain *Quran'ic Suras*. *Sura 7 : 180* is translated as "leave those who deviate ( *yulhiduna* var. *yalhaduna* ) in regard to His names." Also *Sura 41 : 40* is translated as "Verily, those who deviate in regard to Our signs ( *yulhiduna fi ayatina* ) are not hidden from Us" and in *Sura 22 : 25* the translation reads "whoever seeks in it (sc. the sacred mosque in Mecca) to perpetuate deviation (*bi-ilhad*) wantonly, We shall make him taste a painful punishment."<sup>638</sup>

<sup>630</sup> al-Suyuti, Jalal al-Din Abdel Rahman Ibn Abu Bakr, *Ruh al-Ma'ani fi tafsir al-Qur'an al-'Azeem wa al-Sab' al-Mathani*, op.cit., Vol.5, p687-688

<sup>631</sup> Al-Tabari, *Jam'a al-Bayan 'an ta'wil ayat al-Quran*, op.cit., Vol. 11, p114-115

<sup>632</sup> al-Alusi, Shihaboldin al-Sayyid Mahmoud, *al-Dur al-Manthur fi al-Tafsir al-Ma'thur*, op.cit., Vol.12, p378

<sup>633</sup> Ibn Kathir, *Tafsir al-Quran al-'azeem*, op.cit., Vol.4, p91

<sup>634</sup> Ibn 'Abbas, *Tanwir al-Miqbas min tafsir Ibn 'Abbas*, op.cit., p508

<sup>635</sup> Thomas P. Hughes, *Dictionary of Islam*, W. H. Allen & Co., London, 1895, p419

<sup>636</sup> *The Encyclopaedia of Islam*, Volume VII, op. cit., p546 also see B. Lewis, *Islam in History*, op.cit., p287

<sup>637</sup> *The Encyclopaedia of Islam*, Ibid., p546



The change in the use of both *mulhid* and *ilhad* for them to gain the same meaning as *baghi* (rebel), shows another example of further obfuscation and the blurring of the boundaries, how one word can transfer from its original category and definition, over to another category, to be used in a slightly different context. During the Umayyad era both the terms *mulhid* and *ilhad* were clearly used to define *desertion* from the community by the faithful and were also used as a clarification of any rebellion against the authentic caliphs. *Mulhid* became synonymous with the term *baghi* [rebel] and *shakk al-asa* (splitter of the ranks of the faithful). One example of its use in the Umayyad period was against ‘Abd Allah b. al-Zubayr, who identified himself as

the seeker of asylum in the Sacred House (al-’a’idh bi ‘l-bayt.) He was accused, by his Umayyad opponents - who used a reference from the Sura 22 :25 from the Qur’an to base their argument - as “the deviator (*mulhid*) in the Sacred Mosque.”<sup>639</sup>

Other evidence of mis-use of sacred material to implicate such deviation of the devout faithful is also apparent in this era. It is argued that the term and such accusations were seemingly used for political reasons rather than religious faith. The Encyclopaedia presents the example of deliberately forged *hadiths* by the Umayyad propaganda scheme, which stated within these *hadiths* that the Prophet predicted that “A man of Kuraysh shall deviate (*yulhidu*) in Mecca upon whom half of [God’s] punishment of the world will rest [in the hereafter].” Another, similar *hadith*, claims that “A man of Kuraysh shall deviate in [the Sanctuary of God] whose crimes, if weighed against the crimes of mankind and the *Djinn* (*al-thakalayn*) would preponderate.”<sup>640</sup>

A further point which has been raised is the issue of some other potential forgery, believed to have been used as propaganda during this time. One *hadith*, ascribed to the Prophet, defines that the “Monopolisation of grain (*ihthikar al-ta’am*) in the Sanctuary constitutes *ilhad* in it.” This *hadith* possibly arose during the Umayyad anti-Zubayr propaganda material which was distributed, while all of the supporters of Ibn al-Zubayr were referred to as *mulhidun*. However, it is important to be aware that

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<sup>638</sup> Ibid., p546

<sup>639</sup> Ibid., p546

<sup>640</sup> Ibid., p546

conversely to this approach, the poet Djarir announced that loyal followers and supporters of the Umayyads were “never being tempted by *ilhad* (*wa-la hammu bi-ilhadi*).”<sup>641</sup>

Toward the end of the Umayyad period, the poet Ru'ba described the kharidji leader al-Dahhak b. Kays al-Shaybani as being supported and followed by every *mulhid*. Diametrically opposed to this view, the kharidji's perceived the Umayyad leadership to overtly be deviators from correct path of Islam. Their poet, 'Isa al-khatti, stated during the period of 'Ubayd Allah b. Ziyad, that “I am wary of meeting my God without having frightened the tyrants and deviators (*dhawi 'lbaghy wa 'l-ilhad*) in a mighty army.”<sup>642</sup>

Further evidence offers description of the 'Abbasid era, when the *kalam* theologians began to use the term *mulhid* as a direct reference to a “heretic, deviator in religious beliefs”<sup>643</sup> Also, the term *ilhad* developed its use, meaning to signify rejection of religion through materialist scepticism and atheism. Written refutations against *mulhidun* occurred in the 2nd./8th. and 3rd./9th. centuries by Mu'tazili theologians which included Dirar b. 'Amr, Abu 'l-Hudhayl, al-Nazzam, al-Asamm, al-Murdar, Bishr b. al-Mu'tamir and also by the Murdji'i al-Husayn al-Nadjdjar and the Ibadi al-Haytham b. al-Haytham. These pieces of work are not considered extant, but what is considered to no longer exist, is the book *al-Radd 'ala 'l-mulhid* which was written by a Zaydi imam, al-Kasim b. Ibrahim al-Rasi [d.246AH/860AD]. His work clearly perceives that any *mulhid* was a religious sceptic who would be fully biased and inclined towards atheism.<sup>644</sup>

There also exists relevant and controversial written material which is considered both a criticism of, and a deviant teaching, of the Qur'an. This work has a direct reference to *Sura* 12 : 40, and the work is referred to as being *ilhad*. The work of a Mu'tazili grammarian Kutrub [d. 206AD/821AD] is entitled “*al-Radd 'ala 'l-mulhidun fi mutashabih al-Qur'an*” and there is also a book by al-Djahiz [d.255AH/868-9AD]

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<sup>641</sup> Ibid.,p546

<sup>642</sup> Ibid., p546

<sup>643</sup> Ibid., p546

<sup>644</sup> Ibid., p546. Also see W. Madelung, '*Der Imam al-Qasim ibn Ibrahim*', Berlin, 1965, p100 and p110



entitled “*al-Radd ‘ala man alhada fi kitab Allah*” which also relates to the same position. Within the 6th/12th. century Muhammad b. Yahya al-Zabidi [d.555AH/1160AD], who was a Yamani grammarian and Hanafi teacher, wrote “*Radd ‘ala man alhada fi ‘l-kitab al-aziz.*”<sup>645</sup>

Al-Ash’ari [d.324/935-6] expressed his own opinion and analysis within his work “*makalat al-mulhidin*” describing the “cosmological theories of the ancients”<sup>646</sup> referring to the Westernised Greek philosophers. His work defines the word *mulhida* as compromising “the *mu’attila* [deniers of God’s attributes], *zandika* (sic)<sup>647</sup>, dualists [*thanawiyya*], Barahima and others who repudiate the Creator and deny prophethood.”<sup>648</sup>

In later years that followed this period, during the era of the Isma’ilis, the Isma’ilis themselves, within the Persian eastern territory, were referred to as ‘crypto-atheists’ who held the position of polemic opposition and were charged with the accusation of *ilhad*. Simultaneously at this time, the Transoxanian Maturidi theologian Abu ‘l-mu’in al-Nasafi [d.508/1114] wrote another refutation of Batiniyya [Isma’iliyya] which he entitled “*al-Ifsad li khuda’ahl al-ilhad.*”<sup>649</sup>

Al-‘Shahrastani [d.548/1153] declared that the Nizari Isma’ilis, who came from the Khurasan region were referred to, collectively, as the ‘*ta’limiyya* or *mulhida*. Towards the end of the 6th./12th. century the plural term of *malahida*, or the early Persian use of *mulahida*, was widely and regularly used when in reference to the Nizari Isma’ilis as a whole group, irrelevant of their location. During the Mongol period it has been recorded that European and Chinese travellers used this phrase as a description of the Nizari, while they retold their tales of the travelling experience, on their return to their

<sup>645</sup> *The Encyclopaedia of Islam*, Volume VII, Ibid, p546. Also see C. Brockelmann, S I, 764, Erster (Zweiter, dritter) Supplementband, Leiden, 1937-42

<sup>646</sup> *The Encyclopaedia of Islam*, Ibid., p546

<sup>647</sup> *zandika* is more often transliterated as *zandaqah*. See above for the detailed definition of *zandika* and *zindiq*

<sup>648</sup> *The Encyclopaedia of Islam*, Volume VII, op. cit., p546. “ ‘Dualists’ are known as *ath-thuna’iyyah* or *al-ithnayniyyah*. They have a doctrine that there are two mutually antagonistic principles in the universe; good and evil. Since, in Islam, Allah is the Sole Principle and is good - the Sovereign Good - the doctrine of Dualism is heresy,” *The Concise Encyclopaedia of Islam*, p183

<sup>649</sup> D. Gimaret and G. Monnot, *Shahrastani : Livre des Religions et des Sectes*, 1., tr, Louvain, 1986, p544, footnote 34

home countries.<sup>650</sup> This is a clear example that such phrases were overtly in usage within the public arena as normal terminology in descriptions concerning a certain group of society.

During the Ottoman era, the use of both *mulhid* and *ilhad* were implemented as terms of derogatory slights towards those who were perceived to be the believers of the “subversive doctrines among the Shi’i’s and Sufis.”<sup>651</sup>

## 2.9 irtidad ( ارتداد ); ridda ( ردة ) and murtadd ( مرتد ) – according to ahl al-sunna

The Arabic term which is equivalent to apostasy is *irtidad* or *ridda*. Both are derived from the root *radd*, which means “to retract, to retire, to withdraw from or fall back from.”<sup>652</sup> Linguistically, “*ridda* is an intransitive verb and its root, *rdd*, has no transitive form; a person can recant and no outside agency can play a part in it.”<sup>653</sup>

The term specifically for an apostate is *murtadd*<sup>654</sup> [“one who turns”]<sup>655</sup>

and one who apostatizes is called *man artadd ’an dinihi* i.e. ‘who turns his back on religion.’ Two words are used for apostasy in Moslem law : *irtidad* and *ridda*. The latter term relates to apostasy from Islam into unbelief, *kufr*; the former from Islam to some other religion, for example Christianity.<sup>656</sup>

A further definition briefly relates to the legal understanding of the terms :

Apostasy is known as *irtidad* or *ridda*, which literally means *looting*. [Italics in the original text]. Technically *irtidad* is known as ‘giving up and deviating from Islam.’ .....In the term of Islamic science, it is

<sup>650</sup> E. Bretschneider, *Medieval Researches From Eastern Asiatic Sources*, London, 1887, pi, p115, pp133-6 also H. Franke, *Das Chinesische Wort für Mumie*, in *Oriens*, X, 1957, pp255-7

<sup>651</sup> *The Encyclopaedia of Islam*, Volume VII, op. cit., p546

<sup>652</sup> Siddiqi, op. cit., p95. Also see Mohamed S. El-Awa, *Punishment in Islamic law: A Comparative Study*, 1981, American Trust Publications, Indianapolis, p49-50 and also Rahman, Shaikh Abdur, *Punishment of Apostasy in Islam*, 1996, Kitab Bhavan, New Dehli, India, p9. Also see Asaf A. A. Fyze, *Outlines of Muhammadan Law*, Oxford University Press, 1974 [Fourth Edition], p.178 also see Tahir-ul-Qadri, Muhammad, *Islamic Penal System and Philosophy*, 1995, p384, Minhaj-ul-Qur’an Publications, Lahore, Pakistan.

<sup>653</sup> Ahmad, Hazrat Mirza Tahir, op. cit., p61

<sup>654</sup> Siddiqi, Ibid., p96. Also see El-Awa, Ibid., p50, and Fyze, Ibid., p178. Also see Samuel M. Zwemer, 1975, *The Law of Apostasy in Islam*, Amarko Book Agency, New Dehli, India, p33. Also see Cyril Glasse, *The Concise Encyclopaedia of Islam*, Stacey International, London, 1989, p44, and also *The Encyclopaedia of Islam*, Volume VII, E. J. Brill, Leiden, 1992, p635 and Thomas P. Hughes, *Dictionary of Islam*, 1895, p16 and Tahir-ul-Qadri, Mohammad, *Islamic Penal System and Philosophy*, op. cit., p384

<sup>655</sup> *The Encyclopaedia of Islam*, Volume VII, Ibid., p635

<sup>656</sup> Zwemer, Samuel M., op. cit., p33. Zwemer also cites from al-Raghib al-Isfahani, *al-Mufradat fi gharib al-Qur’an*, Cairo, no date, p191



defined as 'Retraction from Islam by a person who professes Islamic faith, either through any act of speech or deed or faith.'<sup>657</sup>

*ridda* is the word meaning apostasy, but also relates to the period of insurgency on a broader level, including the rise of the false prophets among the desert tribes, which followed the death of the genuine Prophet Mohammed,<sup>658</sup> in a period referred to as *Al-ridda* ['The period of Apostasy']<sup>659</sup> around the time when the leadership following the Prophet's death was successfully established by Abu Bakr, the first Caliph, who controlled most of Arabia at that time.<sup>660</sup> Imam al-Raghib al-Isfahani (d. 502/1108) defined *irtidad* as:

To retrace one's steps back to the point from where one came. The word is especially associated with recantation – returning to *kufr* (disbelief) from Islam, e.g. 'Lo! Those who turn their backs after the guidance hath been Manifested unto them' (Q 47: 26) and 'Whoso if you becometh renegade from his religion' (Q 5: 55).<sup>661</sup>

Majid Khadduri defines *irtadda* to mean "reverted, but legally it applies to Muslims who revert to polytheism or adopt another religion."<sup>662</sup>

Apostasy can be defined in "reference to belief, word or deed or even by failure to observe certain obligatory practices."<sup>663</sup> The accused must be considered completely sane and having acted purely voluntarily and deliberately to then receive a valid condemnation. Mohammad Iqbal Siddiqi, in his work *The Penal Law of Islam*, states that :

<sup>657</sup> Tahir-ul-Qadri, Mohammad, op. cit., p384,

<sup>658</sup> *The Concise Encyclopaedia of Islam*, op. cit., p335

<sup>659</sup> Ibid., p290

<sup>660</sup> *Shorter Encyclopaedia of Islam*, 1953, p475

<sup>661</sup> Hazrat Mirza Tahir Ahmad p61, and who also cited al-Raghib al-Isfahani, *al-Mufradat fi gharib al-Qur'an*, op. cit. Also see Rippin, Andrew, 1988, Editor of *Approaches to the History of the Interpretation of the Qur'an*, Clarendon Press, Oxford, p166 and in footnote 34.

<sup>662</sup> Khadduri, Majid, *The Islamic Law of Nations; Shaybani's Siyar – Translated With An Introduction, Notes and Appendices*, 1966, The Johns Hopkins Press, Baltimore, USA, p195. Khadduri also cites the work of : Shafi'i, Abu 'Abd-Allah Muhammad bin Idris, *Kitab al-Umm*, Vol.VI, Cairo, 1321-1325/1904-1908, p145 and also Kasani, 'Ala al-Din Abu Bakr b. Mas'ud, *Badai' al-Sanai'*, Cairo, 1328/1910, Vol. VII, p134, (Khadduri, ibid., in footnote 2 on p195)

<sup>663</sup> Siddiqi, op. cit., p95

The famous scholar Qulyubi<sup>664</sup> has defined apostasy as dis-association from Islam from either the intention of *atheism* (*kufr*) or with the words of *atheism* or with an act of *atheism*.<sup>665</sup>

Further to the positions already stated, Mahmoud Ayoub succinctly highlights the specific situations which may occur to induce an accusation of *ridda* to a genuine *murtadd*. In a concise description, Ayoub also covers a broader view in his definition of the acts and speech that imply the guilt of apostasy during the use of such actions. This approach clearly shows the important link with the term of *shirk*, described above, together with the importance of the *shahadah*.

Juristically, apostasy is an act of rejection of faith committed by a Muslim whose Islam had been affirmed without any coercion by the two *shahadahs* that there is no god except God and that Muhammad is the messenger of God.

Apostasy may be expressed unequivocally in the declaration "I ascribe partners to God," or the assertion that god is a corporeal form like all other bodies. Likewise, belief in the eternity of the world, in as much as it implies denial of the creator, is an act of apostasy. Furthermore, belief in reincarnation or the transmigration of souls is an act of apostasy. This is because it implies denial of the day of Resurrection and judgement, which contradicts the express teaching of the *Qur'an*.<sup>666</sup>

A broader definition of the acts, illuminate the depth of perceived rejection of faith. This broader account refers to the physical acts directed by individuals directly towards the *Qur'an*. These acts show a clear disinterest and disrespect by the perpetrator to the previous faith they held. Mahmoud Ayoub refers to the work of 'Abd al-Rahman al-Jaziri, *al-Fiqh 'ala al-Madhahib al-Arab'ah*, which elaborates on these acts and places the legal positions that are held on the authenticity of apostasy. Such acts can range from disposing a full or part copy of the *Qur'an* to much more minor elements, such as destroying

even a scrap of paper containing one word from the sacred Book may be regarded as an act of apostasy. Burning a copy or a page of the *Qur'an*, not with the intention of protecting it from being soiled or rendered impure, or for the purpose of using it as a cure for a sick person may also signify apostasy. This broad ruling applies as well to books of *hadith* and

<sup>664</sup> Siddiqi, Ibid., p95. Siddiqi has not cited Qulyubi's full name and the author of this research has been unable to locate Qulyubi's full name from other sources in both relevant and unrelated literature.

<sup>665</sup> Siddiqi, op. cit., (Italics are from the original), p95

<sup>666</sup> Ayoub, Mahmoud, 1994 'Religious Freedom and the Law of Apostasy in Islam' in *Islamochristiana*, 20, no publisher provided, p75-91



jurisprudence (*fiqh*) if the intention behind such acts of disrespect is to disparage the tradition of Islam and its sacred law.<sup>667</sup>

Further legal definitions of *ridda* and *murtadd* offer another manner of reference to appropriate acts, considered to be the crime. *ridda* is defined as 'turning away from Islam' ( *al-rudju 'an din al-Islam* ) or 'severing the ties with Islam' ( *qat' al-Islam* ).<sup>668</sup>

As stated by Wael Hallaq, in the *Encyclopaedia of the Qur'an* :

Within Islamic law, apostasy is defined as releasing oneself from Islam (*qat' al-Islam*) by means of saying or doing something heretical, even in jest. Upholding a theological doctrine which negates the existence of God; rejecting the Prophets; mocking or cursing of God or the Prophet; kneeling down in prayer to an idol, the moon or the sun; dumping a copy of the Qur'an in a waste basket; declaring legal what is otherwise strictly illegal, such as adultery, all constitute apostasy.<sup>669</sup>

It is argued by the Miliki *madhhab* that a *murtadd* is a Muslim, either by birth or by conversion who recants Islam – irrelevant of whether they had previously embraced another religion. Hence,

Malikite doctrine attaches particular importance to the *murtadd's* profession of Islam prior to his apostasy. They define *ridda* as *kufr ba'd Islam taqarrar* : 'unbelief (of the Moslem whose) Islam has been established beyond doubt.' It is equally stated that this Islam needs to be evident in both *qawl* and '*amal* ; A person who embraced the faith by merely pronouncing the *shahadah* without conforming to religious orthopraxy (such as the daily salah's) [*sic*] would not be considered qualified to perform a legally valid act of apostasy.<sup>670</sup>

In a general overview, apostasy can be seen to materialise in either words or deeds which specifically imply unbelief – or, according to the Shafi'ite *madhhab*, the deliberate intention of unbelief. Thus, words used can be either explicit or implicit, or "utterances incompatible with the theological consensus (*ijma'*) or with the axiomatic articles of faith ( *ma 'ulima min al-din darurat* )."<sup>671</sup> As general rules to categorise

<sup>667</sup> Ibid., p76. Also cited as a reference was 'Abd al-Rahman al-Jaziri, *al-Fiqh 'ala al-Madhahib al-Arab'ah*, 5 vols., Beirut : Dar al-kutub al-Ilmiyah, no date, Vol. 5, pp422-423

<sup>668</sup> Peters, Rudolph, and De Vries, Gert, J. J., 1976-1977 'Apostasy in Islam' in *Die Welt des Islams*, Vol. XVII, p1-25

<sup>669</sup> Hallaq, Wael, 'Apostasy' in *Encyclopaedia of the Qur'an*, edited by Jane Dammen McAuliffe, Volume One, 'A-D,' Brill, Leiden, Netherlands, 2001, p122

<sup>670</sup> Peters, Rudolph, and De Vries, Gert, J. J., Ibid., p3 and footnote 3. They also cite Abu 'Ali Muhammad Ibn Yusuf al-Mawwaq, quoted in the margins of Abu 'Ali Muhammad Ibn Muhammad al-Hattab, *Mawahib al-djalil li-sharh mukh-tasar'* Khalil, Tarabulus (Libiya)[*sic*] : Maktabat al-Nadjah, no date, 6 vols (repr. of the 1329 H Cairo edition, Vol. 6, p279-80)

<sup>671</sup> Peters, Rudolph, and De Vries, Gert, *ibid.*, p3

such expressions and physical acts are argued to have not been officially formulated, there are still several extant documents, which can be seen as a fair collection of the specified sayings and acts that are referred to as acts of *ridda*. The works which exclusively cover this area of such offences include *Ahkam al-murtadd fi al-shari'ah al-Islamiyyah* by Nu'man 'Abd al-Raziq al-Samarra'i.<sup>672</sup>

An excellent example of the classical legal definitions of such acts can be found in the work of 'Abd al-Rahman Ibn Muhammad Shaykhzadeh, a Hanafite scholar in his work of 1302AH, *Madjma al-anhur sharh multaqa al-abhur*. His assessment of such acts covers several areas which include intentional acts against God, prophets, angels, the Qur'an; daily prayer – *salat*; science; and seemingly miscellaneous areas and incidents which have been recorded as definable acts of *irtidad*. This overview summarises the acts that have been mentioned above, including the Christian belief of the 'Trinity,' and the act of *shirk*, hence :

***Relating to Allah*** : To deny Allah's divinity; to conceive of Allah as a woman or a child; to attribute partners to Allah; to hold Jesus for the son of Allah or to conceive of Allah as part of a trinity to deny Allah's unity or one of his divine qualities

***Relating to prophets and angels***: to deny the prophethood of Muhammad; to assert that prophets are free of error; to consider oneself a prophet; to assert that all animal species have their specific prophets; to declare that the Angel of Death Azra'il does not always correctly fulfil this task and occasionally picks the wrong people

***Relating to the Koran, pious formulas (adhkar) and ritual prayer (salah)***: to repudiate some of the Scriptures; to add or to omit Koranic verses; to assert the createdness of the Koran; to translate the Koran into, for instance, the Persian language; to utter the '*bismillah*' – formula while raising the wineglass or throwing the dice at backgammon

***Relating to science ('ilm)*** : to ridicule scholars; to address scholars in a derisive manner as by the diminutive '*uwaylim*'; to reject the validity of the *Shari'ah* courts; to prefer an ignorant ascetic (*zahid djahil*) to a sinful scholar ('*alim fasiq*).

The more miscellaneous expressions of unbelief may be illustrated by the following examples : to pay respect to a non-Moslem; to celebrate *Nawruz*

<sup>672</sup> Ibid. Also see : Nu'man 'Abd al-Raziq al-Samarra'i, 1968, *Ahkam al-murtadd fi al-shari'ah al-Islamiyyah*, Beirut, Dar al-Arabiyyah.



(The Iranian New Year); to assert one's belief in transmigration or in the uncreatedness of the world.<sup>673</sup>

It can be argued that, to some extent, the collection of the acts that have been stated here as being 'unacceptable,' tend to show a somewhat random, even trivial, selection. Such acts that one would question as to whether they can be genuinely categorised as being 'apostasy' would certainly include acts such as these:

- to translate the Qur'an into Persian;
- to prefer an ignorant ascetic (*zahid djahil*) to a sinful scholar (*'alim fasiq*)
- to pay any respect to a non-Muslim; and
- to celebrate *Nawruz* (The Iranian New Year).

If an observer concludes that the list contains arbitrary things, it can also be seen – at the very least – to be based on the subjective understanding of the topic, by the person who presents the list.

Muhammad Hamidullah in his work *Muslim Conduct of State*, defines apostasy in Muslim law as an act of "turning away from Islam after being a Muslim. Not only does it occur when a person declares his conversion to some non-Islamic religion, but also when he refuses to believe in any and every article of the Islamic faith."<sup>674</sup>

Hamidullah raises the position of the relevant punishment for this act, by emphatically assessing the corollary from a broad background of evidential defense including :

The sayings and the doings of the Prophet, the decision and the practice of the Caliph Abu Bakr, the consensus of the opinion of the Companions of the Prophet and all the later Muslim jurisconsults, and even certain indirect verses of the Qur'an<sup>675</sup> all prescribe capital punishment for an apostate.<sup>676</sup>

The point he raises here, that all the sources quoted, including the Qur'an, "prescribe capital punishment for an apostate" will be addressed in Chapter Three, to assess how authentic this claim is, and to what extent it can be defended or rejected.

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<sup>673</sup> Ibid., p 3 and footnote 6 they cite: Shaykhzadeh, 'Abd al-Rahman Ibn Muhammad, *Madjma al-anhur sharh multaqa al-abhur*, 1302H, Istanbul : Dar al-Tiba'ah al-Amirah, 2 vols., p626 and p629-637

<sup>674</sup> Hamidullah, Muhammad, *Muslim Conduct of State*, 1953 (3<sup>rd</sup> Revised edition), Sh. Muhammad Ashraf, Lahore, Pakistan, p171

<sup>675</sup> He cites the verses 37:57 and 5:54

Hamidullah also gives a presentation of the absolute tolerance of the Prophet. On one occasion, related by Ibn Hisham, the ambassadors of 'Musailimah the Imposter' journeyed to Medina and under their 'camp-assessment' task, they stated that they also held the same opinions of their leader whom had sent them. In reaction to this,

The Prophet said 'But for the fact that ambassadors cannot be killed, by God, I would have ordered you both to be beheaded. (They were Muslims subjects who had apostatised).<sup>677</sup>

Ibn Hisham relates to another tendency of the Prophet's inclination towards complete tolerance. Hamidullah states from Ibn Hisham's work, that there is no instance where the Prophet allowed any massacre to occur after winning some form of battle, or after occupying some town. He suggests that the conquest of Mecca is an ideal example of this point. In one incident, after eventually overwhelming the innumerable occasions of torture inflicted upon the Muslims by the Meccan opposition, the Prophet – having conquered the city – declared a very broad amnesty on how the captured residents should be treated. The amnesty only excluded several named individuals, who were declared as outlaws and were to be killed when found. They were excluded as they had been categorised as State criminals, having committed murder and apostasy, together with other related crimes. However, even these offensive characters were later pardoned by the Prophet. Unfortunately, three of them had been killed by Muslim soldiers, who had not reported their discovery of the outlaws to the Prophet, before they executed them.<sup>678</sup>

Mahiudin Abu Zakaria Yahya Ibn Sharif En-Nawawi defines the acts of 'apostasy' in six decisive points :

Apostasy consists in the abjuration of Islam, either mentally, or by words, or by acts incompatible with faith. As to oral abjuration it matters little whether the words are said in joke, or through a spirit of contradiction, or in good faith. But before such words can be considered as a sign of apostasy, they must contain a precise declaration –

- 1 – That one does not believe in the existence of the Creator, or of His apostles; or
- 2 – That Muhammad, or one of the other apostles, is an impostor; or
- 3 – That one considers lawful what is strictly forbidden by the *ijmaa*, e.g. the crime of fornication; or

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<sup>676</sup> Hamidullah, Muhammad, Ibid., p171

<sup>677</sup> Ibid., p174

<sup>678</sup> Ibid., p206



- 4 – That one considers to be forbidden what is lawful according to the *ijmaa*,
- 5 – That one is not obliged to follow the precepts of the *ijmaa*, as well positive as negative; or
- 6 – That one intends shortly to change one's religion; or that one has doubt upon the subject of the truth of Islam, etc.<sup>679</sup>

Assessing the acts undertaken, they are not to be considered incompatible with faith, unless they show a deliberate mockery or denial of religion. Examples given by En-Nawawi include "throwing the Koran upon a muck heap, or prostrating oneself before an idol, or worshipping the sun. No account is taken of the apostasy of a minor or a lunatic, nor of acts committed under violent compulsion."<sup>680</sup> Interestingly enough, even if a person is found guilty of apostasy and after the sentence is delivered they become psychologically damaged, or considered 'insane,' they will not be put to death until they are perceived to have returned to their sanity. This is also mentioned by Wael Hallaq in the *Encyclopaedia of the Qur'an*, also declares that:

Legally speaking, minors, madmen and fully capacitated persons coerced into apostasy are not considered apostates.<sup>681</sup>

However, according to the Shafi'i school of law, "This favour, however, does not, according to our school, extend to the case of drunkenness. Apostasy, and a declaration of having returned from one's errors, pronounced by a drunken person, have the ordinary legal consequences."<sup>682</sup>

Those who, having witnessed acts of apostasy by the accused, have no obligation to describe detailed facts of the actions they saw. The school of Shafi'i believe that the defenders may simply confine themselves to only stating, on oath, that they believe the person or group to be an apostate or apostates. Although other authorities hold a differing position, contrary to this point, the majority of legal schools all hold the position that it does not matter if the accused presents any denial of the accusations placed against them "even where the assertions of the witnesses are made in general terms."<sup>683</sup>

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<sup>679</sup> Nawawi, Mahiudin Abu Zakaria Yahya Ibn Sharif En, *Minhaj et Talibin : A Manual of Muhammadan Law According to the School of Shafi'i – Translated into English From the French Edition of L. W. C. Van Den Berg by E. C. Howard*, 1914, W. Thacker & Co., London, 1914, p436

<sup>680</sup> Nawawi, *ibid.*, p436

<sup>681</sup> Hallaq, Wael, 'Apostasy' in *Encyclopaedia of the Qur'an*, *op.cit.*, p122

<sup>682</sup> Nawawi, *op.cit.*, p436

However, if the accused declares that their acts occurred due to compulsion against their will, and if the circumstances and situation they were in render his defence as being plausible<sup>684</sup>, then the defendant have the presumption in their favour, provided that they take their own oath. This presumption does not arise if such circumstances are absent. The legal stance in the Shafi'i school, for this possibility to occur as a legitimate claim from a defendant, stands as :

Only where the two witnesses required by law do not declare that 'the accused is apostate,' but that 'the words pronounced by him are words implying apostasy,' and the accused then maintains that he only pronounced them under compulsion, the presumption is in his favour, and it is not necessary for him to give more detailed explanations.<sup>685</sup>

A further definition by Islamic jurists is presented by M. A. Abdur Rahim, who covers the legal positions of all four Sunni schools of *fiqh*. He presents the status of the apostate to be considered beyond the realm of any legal protection and also raises the point which offers the allowance for any Muslim, who decides to kill an apostate, before they return to Islam, that they will not receive any punishment for this act of killing the disbeliever.

Apostacy [*sic*] or change of faith from Islam to infidelity places the apostate outside the protection of law. The law, however, by way of indulgence gives the apostate a certain *locus poenitentiae*. For instance, he will be first asked to conform to the Faith and, if he entertains any doubt, efforts must be made to remove it by argument. He will be given an option of three days to re-embrace the Faith, before the sentence is passed on him. But since by the very act of apostacy [*sic*] a man loses the protection of law, if even before the chance of re-embracing the Faith has been given to him, a Muslim kills an apostate, it will be considered an improper act, but he would incur no penalty of the law.<sup>686</sup>

However, this being so, the legal status for those accused of 'heresy' holds a different position. Heretics, who promote the *tawhid* (Unity of Allah) and adhere to the

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<sup>683</sup> Nawawi, *ibid.*, p436

<sup>684</sup> Nawawi suggests the commonly understood example as : "e.g. if he has been kept a prisoner by infidels," Nawawi, *ibid.*, p436-437

<sup>685</sup> Nawawi, *ibid.*, p437

<sup>686</sup> Abdur Rahim, M. A., *The Principles of Muhammadan Jurisprudence, According to the Hanafi, Maliki, Shafi'i and Hanbali Schools*, 1911, Luzac & Co., London, p253. Abdur Rahim does not give any differences here held between any named schools of law. The material is presented as a general overview on the treatment of apostates, by all the schools. However, he does offer the differing positions held by the schools of law on the matters of inheritance of the apostate's property by their heirs. However, this field of law is beyond the boundaries of this present research, for any detailed discussion.



prophethood of the Prophet Muhammad, this enables them to still remain in the status of legitimate citizens within the community, having the same protection of the legal system within it. Abdur Rahim describes this position as :

Since heretics believe in the unity of the Godhead and the mission of the Prophet, the Muhammadan law applies to them, or in other words, their legal capacity is in no way affected. But the enforcement of laws against them necessarily depends upon the power of the Imam to enforce them, that is to say, it is determined by his territorial jurisdiction. For instance, if a sect of the Muhammadans like the Kharijis of the olden days refuse to recognise the authority of the Imam and set up a government of their own protected by forts and troops, the orthodox laws cannot be enforced against them though the Imam may lawfully wage war against them in order to reduce them to submission, if they begin hostilities as held by some, and even if they do not as held by others. If, therefore, a heretic lives within the jurisdiction of the Imam all the orthodox laws will apply to him, although he may hold a different view. Law does not excuse heresy that is to say, will not recognise heretical doctrines, though the ignorance of a heretic is not so gross as that of a non-Muslim.<sup>687</sup>

## **2.10 Blasphemy in Islam.**

Muslim scholars and Islamic jurists offer several different terms that apply to acts that are held in the category of 'blasphemy.' The most common terms used are *Sabb Allah* (to vilify, slur, insult, blaspheme against God), *Sabb al-Rasul* (blaspheme against the Messenger), this is also known as and *Sabb al-Nabi* (blaspheme against the Prophet), and there is also *Sabb al-sahabi* (to insult on of the Companions of the Prophet). The blasphemer is a *sabbab*.<sup>688</sup>

The main words used for blasphemy in Arabic are *sabb* (abuse, insult) and *shatm* (abuse, vilification,).<sup>689</sup> Lutz Wiederhold expands on these words, signifying that :

In addition, there are a number of other terms that are used less frequently in order to describe acts of blasphemy, such as *la'n* (cursing, malediction), *ta'n* (accusing, attacking), *idha* (harming, hurting), or the verb *nala* with the preposition *min* (do harm to somebody, defame).<sup>690</sup>

<sup>687</sup> Abdur Rahim, M. A., *ibid.*, p253-254

<sup>688</sup> Kamali, Mohammad Hashim, *Freedom of Expression in Islam*, op.cit., p326

<sup>689</sup> Wiederhold, Lutz, 'Blasphemy against the Prophet Muhammad and his Companions (*sabb al-rasul*, *sabb al-sahabah*) : The Introduction of the Topic into Shaf'i Legal Literature and its Relevance for Legal Practice under Mamluk Rule' in *Journal of Semitic Studies*, Vol.XLII, No.1, Spring 1997, p40

<sup>690</sup> Wiederhold, Lutz, *ibid.*, p40

Devin Stewart in the section on 'Blasphemy' within the *Encyclopaedia of the Qur'an*, argues that there are two words within the Qur'an "that correspond most closely to blasphemy" which "are *takdhib*, 'giving the lie, denial' and *iftira*', 'invention.'<sup>691</sup> He furthers these definitions in a more detailed explanation, as :

Blasphemy by denial (*takdhib*) is the outright rejection of revealed religious truths, such as the revelations and warnings of God's messengers and the announcements of the day of judgement and the meeting with God. It can also include the refusal to recognize and acknowledge God's signs, particularly the wonders of the natural world which serve as evidence of his omnipotence and unity. According to passages such as Q5:10, the refusal to recognize God's signs is associated with unbelief (*kufr*).<sup>692</sup>

Concerning the second form of blasphemy, Devin describes this aspect as the public announcement of one's disbelief, by having unashamedly created a false-god. This concept is also referred to within the Qur'an, in several verses. Devin suggests that :

Blasphemy by invention (*iftira*' ) is the declaration of a false belief of one's own contrivance. It most often occurs in the verbal idiom 'to invent a lie against God' (*iftara 'ala llahi kadhiban*, Q11:18). Similar expressions that convey this signification are 'to lie against God' (*kadhaba 'ala llah*, Q39:32) and 'to say a lie against God' (*qala 'ala llahi al-kadhib*, Q3:75, 78). This form of blasphemy calls down God's curse (Q11:18) and is equated with great sin or wrongdoing, as apparent from the oft-repeated rhetorical question, 'Who does a greater wrong than he who invents a lie against God?' (e.g.Q6:21).<sup>693</sup>

Mohammad Hashim Kamali, in his work *Freedom of Expression in Islam*, makes the general statement that:

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<sup>691</sup> Stewart, Devin, J., 'Blasphemy' in *Encyclopaedia of the Qur'an*, op.cit., p235

<sup>692</sup> Ibid., p235

<sup>693</sup> Ibid., p235



classical Islamic law penalises both blasphemy and apostasy with death – the juristic manuals of *fiqh* (jurisprudence) across the *madhahib* (the four Islamic Schools of law<sup>694</sup>) leave in little doubt that this is the stand of the law.”<sup>695</sup>

However, although he states that this general agreement covers all four Sunni Islamic Schools of law, as stated within the jurisprudence manuals, another important point is also raised, clarifying that:

despite the remarkable consistency that one finds on this point, the issue of punishment by death for apostasy is controversial, and various opinions have been recorded on the matter ever since the early days of Islam.<sup>696</sup>

A major problem ever present, is the actual difficulty in defining the concept of blasphemy. The scope of offences is so wide that it becomes rather complicated when attempting to mark its boundaries. Kamali argues that this is also the case within Christianity and Judaism. A main obstacle for defining it concisely within Islam is that there is no specific definition of blasphemy in the *fiqh* (jurisprudence) literature, as it is cited in these legal documents to be included under the offence of apostasy and treated within that definition of acts. Kamali suggests though, that blasphemy has its own classification as being “a contemptuous and hostile attack on the fundamentals of religion which offends the sensibilities of its adherents. It is on this basis that blasphemy can be distinguished from apostasy for the latter can take place without any contemptuous attack or sacrilege being committed.”<sup>697</sup> The overall view of having subsumed blasphemy under apostasy is based on the idea when someone may blaspheme the essential natures of a faith, in doing so, they simultaneously abandon it.

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<sup>694</sup> The four Islamic schools of Sunni law are the Hanafi, Maliki, Shafi'i and Hanbali, named after their founders : Imam Abu Hanifah, 80-150AH, circa 700-767AD (full name : Abu Hanifah al-Nu'man bin Thabit), Malik bin Anas, 93-179AH, circa 712-795AD (full name : Malik bin Anas bin Malik bin Abu 'Aamir al-Asbahi Malik), Muhammad bin Idris Shafi'i, 150-204AH, circa 767-820AD, (full name : Muhammad bin Idris bin Al-'Abbas bin 'Uthman bin Shafi' bin As-Sa'ib bin 'Ubaid bin 'Abd Yazid bin Hashim bin 'Abdul-Muttalib bin 'Abd Manaf Al-Qurashi Al-Makki ) and Ibn Hanbal, 164-241AH, circa 780-850- AD, (full name : Ahmad bin Muhammad bin Hanbal Ash-Shaibani), see Shihabuddin, Ahmad bin 'Ali bin Muhammad bin Muhammad bin Ahmad Al-Kinani Ash-Shafi'i, (known generally as Al-Hafiz Ibn Hajar Al-Asqalani), *Bulugh Al-Maram min Adillat Al-Ahkam: Attainment of the Objective according to Evidence of the Ordinances, (with brief notes from the book Subul-us-Salam by Muhammad bin Ismail As-Sanani)*, 1996/1416, Dar-us-Salam Publications, Riyadh, Saudi Arabia, p580, p585 and p588, also see Khadduri, Majid, *The Islamic Laws of Nations; Shaybani's Siyer*, 1966, The Johns Hopkins Press, Baltimore, USA, p302, and also see Nasir, Jamal, J., *The Islamic Law of Personal Status*, 1986, Graham and Trotman Ltd., London, p14-16

<sup>695</sup> Kamali, Mohammad Hashim, op.cit., p212-213

<sup>696</sup> Ibid., p213

<sup>697</sup> Ibid., p213



This being so is understandable, but there is an important need for a unique definition of blasphemy on its own, to establish the crime itself because, obviously a non-Muslim can only commit blasphemy against Islam, but *not* become an apostate, by leaving it.

From a linguistic perspective, the origin of the word 'blasphemy' can be traced to be derived from the Greek words *blapto* (to harm) and *pheme* (speech), which, when placed together, refers to an insult or defamation.<sup>698</sup>

For a broad definition of blasphemy, as perceived in Islam, the *Encyclopedia of Religion and Ethics* suggests that it is

all utterances expressive of contempt for God, for His Names, attributes, laws, commands and prohibitions.....such as the case, for instance, if a Muslim declares that it is impossible for Allah to see or hear everything, or that Allah cannot endure to all eternity, or that He is not one (*wahid*).....All scoffing at Muhammad *or any other prophets of Allah* is also to be regarded in Islam as blasphemy.<sup>699</sup> [Italics added in].

Kamali refers to this definition as being so broad that there is a very flexible scale of acts that it can apply to, thus overlapping different concepts. This definition does not offer a clear understanding of what is perceived to be an accurate accusation of blasphemy *per se*. It means that there is a vague boundary, not presenting precise distinctions between the similar concepts of apostasy from Islam (named as *ridda* and *irtidad*), heresy (*zandaqah*)<sup>700</sup> and the denial of Islam, or disbelief (*kufr*). He does offer some differing approach by Judaism, which attempts to confine the scope of

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<sup>698</sup> Ibid., p214

<sup>699</sup> Ibid., p214, Also see *Encyclopaedia of Religion and Ethics*, ed. James Hastings, New York, T&T Clark, 1908, Vol.II, p672

<sup>700</sup> A *zindiq* is "anyone who, professing to be a Muslim, is really an unbeliever, or anyone who belongs to no religion," *The Encyclopaedia of Islam*, Volume IV, 1978, p771. Also, in a general reference to heresy it relates to those who are considered as atheists (*zanadiqah*; single as *zindiq*), see Kamali, op.cit, p330. *Zandaka / zandaqah* is defined as "heresy, unbelief" and this word had an important emphasis and relevance to the "convert of the Manichaeans." in 982AD, *The Encyclopaedia of Islam*, Volume VI, p421 Essentially, *zindak* and the other forms derived from it are terminology used in *Sharia*' courts to describe the heretic whose written work and spoken teachings are considered as a danger to the state. The conviction of this crime is potentially with the sentencing of the death penalty, based on an interpretation of both the Qur'anic verses 5:33 and 26:48. It also induces damnation by the Maliki school of law which states that it is useless to ask the convicted *zindak* to recant (*istitaba*). However, diametrically opposed to this position, the Hanafi school of law are contrary to this position, in their *takfir* [the denunciation, or excommunication of an unbeliever]. Bernard Lewis, *Islam in History : Ideas, People and Events in the Middle East*, 1993, Open Court, Chicago, USA, p290 and also H. A .R. Gibb and J. H. Kramers, *Shorter Encyclopaedia of Islam*, 1953, p659



what it seen as blasphemy, where it does not include the act of simple disbelief of faith. Also, in comparison with modern Western law, the simple renunciation of faith is not included within the category of blasphemy.

Isabel Fierro, within her work *Andalusian 'Fatawa' on Blasphemy*, argues that there is little consistency, with much disagreement (*ikhtilaf*) between the Islamic legal scholars for the punishment presented to those convicted of blasphemy against Islam, the Qur'an and/or the Prophet Muhammad. As she states :

Punishment for blasphemy, like that for apostasy, is usually (but not without *ikhtilaf*) included among the *hudud* (sing. *hadd*). Both are crimes against religion and can lead to the death penalty<sup>701</sup>

Considering an apostate (*murtadd*), they are granted the potential to repent (*al-istitaba*) with a period of three days, for the possibility of returning to Islam.<sup>702</sup> This length of time to repent differs to a great extent by the different schools of law, the different views will be covered in further detail below. The ability for repentance (*al-istitaba*) is denied to those accused of *zandaqa*, thus the perpetrators who are accused to be a *zindiq*. Malik ibn Anas in his work *al-Muwatta'* argues that a *zindiq* is an apostate who overtly acts as a believer, hiding their 'apostasy' of disbelief (*kufr*).<sup>703</sup> If the apostate does not repent, they are sentenced to death by the sword (*man baddala dina-hu fa-qtulu-hu*), in the manner of being beheaded, as can be seen by the expression of the *hadith* : *man jayyara dina-hu fa-dribu 'unqa-hu*.<sup>704</sup>

Within Islamic law, there is an emphasis towards protecting the honour of the Prophet and the Islamic community, rather than regulating religious belief. As Malise Ruthven explains, in *A Satanic Affair : Salman Rushdie and the Wrath of Islam*, the Islamic law of blasphemy is only applied in Muslim countries. Classical Islamic jurists divided the world into two specific areas: *Dar al-Harb*<sup>705</sup> (the abode of war) and *Dar*

<sup>701</sup> Fierro, Isabel, 'Andalusian 'Fatawa' on Blasphemy' in *Annales Islamologiques*, Institute Français D'Archéologie Orientale du Caire, 1991, Tome XXV, p103.

<sup>702</sup> Safwat, Safia F., 'Offences and Penalties in Islamic Law,' in *The Islamic Quarterly*, The Islamic Cultural Centre, London, 1982, Vol. 26, No. 3, p168, also see An-Na'im, Abdullahi Ahmed, 1986, 'The Islamic Law of Apostasy and it's Modern Applicability : A Case From The Sudan' in *Religion*, Vol. 16, p211.

<sup>703</sup> Fierro, Isabel, *Andalusian 'Fatawa' on Blasphemy*, op.cit., in footnote 4 on p103

<sup>704</sup> *ibid.*, p103. No translation of the Arabic transliteration was provided.

<sup>705</sup> This concept also exists within Christianity. There is Christian theological belief that the world is divided into 'the territory of believers' and those who live in the *in partibus* (in heretical territory). This derives from the original form of *in partibus infidelium* which is the Latin for 'in the region of the

*al-Islam* (the abode of Islam). *Dar al-Islam* is considered to be the 'liberated' territory where the law, or 'God's final revelation to mankind' is applied in fullness. It is clear that :

It's rulers, apart from the caliphs, who virtually disappeared from political view after the tenth century CE, are not theocrats : in theory they cannot legislate. The Law having been revealed in its perfection, their duty is to maintain it by 'ordering the good and forbidding the evil.' Subjects are enjoined to obey their rulers, however arbitrary : in a famous phrase quoted with approval of Ibn Taymiyyah, 'the Sultan is the Shadow of God on earth. Sixty years with an unjust *imam* is better than one night of anarchy.'<sup>706</sup>

Blasphemy (*shatm*)<sup>707</sup>, when specifically used against both Allah (*sabb Allah*) and His Messenger, the Prophet Mohammad (*sabb al-rasul*) in normally accepted and handled within the same category as that of apostasy. This is because a blasphemer, and also those whom are believed to be a magician (*sahir*) are those who undertake the acts of *kufir* (unbelief). However, specifically on this point, the Maliki school of law, have established a separation between the blasphemer and the apostate. This school argues that a blasphemer would not be given the chance for providing repentance or to recant their acts. Also, Fierro argues that within the Maliki school the penalty may not be death, but a discretionary punishment (*ta'dib, adab*), as this final sentence would be based according to the degree of seriousness attached to the words presented by the accused, which initiated the accusation for the act of blasphemy.<sup>708</sup> This is a crucial point to raise, as any discretionary punishment indicates the acceptance of the crime to be categorised within the *ta'zir* (discretionary punishment) system, as opposed to be anywhere near the understanding and acceptance of *hudud* crimes and this punishment system.<sup>709</sup>

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unbelievers,' Sykes, J.B. (Ed.), *The Concise Oxford Dictionary of Current English*, 1988, The Oxford University Press, Oxford, p517

<sup>706</sup> Ruthven, Malise, 1991, *A Satanic Affair : Salman Rushdie and the Wrath of Islam*, The Hogarth Press, London, p51

<sup>707</sup> Fierro, Isabel, 'Andalusian 'Fatawa' on Blasphemy,' op.cit., p107. Also see Wiederhold, Lutz, op.cit, p40

<sup>708</sup> Fierro, Isabel, Andalusian 'Fatawa' on Blasphemy, ibid., p104

<sup>709</sup> *Ta'zir* is the discretionary punishment, delivered on the assessment of given circumstances to provide deterrence of the offence to re-occur; Kamali, Mohammad Hashim, op.cit., p94 and p329. The Islamic legal system consists of three forms of punishment, *hudud*, or *hadd* in single form, (fixed punishments stated within the Qur'an,) *Qisas* (retaliation) and *Ta'zir* (discretionary punishment). *Hudud* and *Qisas* are both restricted to crimes where both the offences and the punishments are prescribe within the Qur'an and Sunnah. See Mohammad Iqbal Siddiqi, *The Penal Law of Islam*, 1991, International Islamic Publishers, New Delhi, p158 also see El-Awa, Mohammad Selim, *Punishment in Islamic Law : A Comparative Study*, American trust Publications, Indianapolis, 1982, p96 also see



Fierro states that the actual form of capital punishment for blasphemy and apostasy is not *clearly* specified within *Shari'ah*, although one could simply assume that a blasphemer would be killed by being beheaded by the sword, which can also be the sentence for an apostate. However, other forms of execution were undertaken, such as “whipping, decapitation, hanging, burning and crucifixion.”<sup>710</sup> The manner of crucifixion (*salb*) is stated within the Maliki doctrine, particularly in the work entitled *Muhtasar*, by Halil ibn Ishaq (d.776AH/1374AD). He based this own work mainly in reference to the previous work undertaken by the respected *Qadi* (judge) ‘Iyad (d.544AH/1149AD) who wrote *al-Sifa’ bi-ta’rif huquq al-Mustafa*.

It interesting to note that *Qadi* ‘Iyad not only based his work of legal positions purely on relevant evidence he found in the Qur’an and the appropriate *ahadith* (Traditions), together with earlier Maliki doctrinal documentation by former authorities, but it also became clear that he had based his conclusions on the legal precedents formally established on two *fatwas* that had been issued on the cases of blasphemy in Al-Andalus (presently known as Andalusia) during the 3<sup>rd</sup> AH /9<sup>th</sup> AD century. The two cases involved Harun ibn Habib and Yahyà ibn Zakariya al-Hassab and both of these *fatwa* were issued during the reign of ‘Abd al-Rahman II, who reigned from 206AH/822AD until 238AH/852AD. They are the only two recorded cases of two Muslims who were accused of ‘blasphemy against God’ during ‘Abd al-Rahman II’s reign.<sup>711</sup>

One of the men, Yahyà ibn Zakariya al-Hassab, was executed while the other one, Harun b. Habib, was acquitted – and was allowed to walk away as a ‘freeman’. Therefore, an assessment of these cases will aim towards understanding both the

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Tahir-ul-Qadri, Muhammad, *Islamic Penal System and Philosophy*, Minhaj-ul-Qur’an Publications, Lahore, 1995, p259, p429 See also Tahir-ul-Qadri, Muhammad, *Classification of Islamic Punishments*, Minhaj-ul-Qur’an Publications, Lahore, 1988, p5, and see O’Sullivan, Declan, ‘*Al-Hudud : الحدود : Definition of Crimes and Punishments stated within the Qur’an and Sunna - Focusing on ‘Apostasy’ [Ridda wa irtidad : ردة و ارتداد ] as a Hadd : حد*, in *Le Courrier Du Geri – Recherches D’Islamologie et de Theologie Musulmane*, in ‘Vol. 3, No. 1-2, Printemps-Automne 2000’ January 2000, GERI (Groupe d’Etudes et de Recherches Islamologiques) in l’Université Marc Bloch de Strasbourg, France, p41-72.

<sup>710</sup> Bernard Lewis, *Islam in History*, op.cit., p291

<sup>711</sup> It is also clearly recorded that, at that time, a group of Christians and crypto-Christians had sought martyrdom through the acts of insulting Islam and God’s Prophet Muhammad, knowing the result

blurring of the boundaries between each offence as shown in the legal consequences of a person's 'unbelief.' Also, considering the completely opposite results in the outcome of each case, this will also present an example of the inconsistency that exists in the legal rulings on the same act that involves what is legally defined as being a form of 'unbelief.' The overview and assesment of both cases will be presented in the 'Case Studies' section of this thesis, in Volume II.

### **2:11 Conclusion.**

So far, this research has established the different definitions and the various understandings of the meanings of each term, when using the words that cover the concepts of 'belief' and 'disbelief' in Islam. This Chapter has also managed to identify how the definitions of each term do not always remain within strict, firm boundaries, to separate each acts from one another. One example of this was presented by Toshihiko Izutsu, who identified the semantic equivalence in the meaning of the terms *kufr* and *shirk*, and also *kafir* and *mushrik*. All four of the terms relate to different acts of unbelief, but it seems possible to accuse a perpetrator of one act with the term that relates to another form of unbelief. This has also been shown with both of the terms *mulhid* and *ilhad*, where, during the Umayyad era, their original meaning changed for them to hold the same meaning as *baghi* (rebel). Also, over a period of time, both the terms *mulhid* and *ilhad* had gradually changed the meaning of their use, to be used as a reference to someone's 'desertion' from the Islamic community. The word apostasy derives from the Greek word for 'desertion' (*αποστάτης*), but has gained the single meaning as a person's the rebellion against God. It does not include harming the community, which is the complete opposite to the definition of treason, which is the rejection of the authority of the state rulers and creating social disorder to reject them. These definitions will be presented in further detail in another Chapter, but are mentioned here to indicate the confusion that can be caused when not separating the very different political crime of treason with the theological sin of 'unbelief'.

The blurring of the boundaries here, manifests how one word can transfer across from its original meaning and context in one category of 'unbelief' and move rather easily

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would mean being executed due to the blasphemous acts; Fierro, Isabel, 'Andalusian 'Fatawa' on Blasphemy,' op.cit., ibid., p104



into another form of 'unbelief,' in a different category. It becomes apparent that the word 'apostasy' has a very specific definition as to what it involves, as a crime. However, it has also been seen that those who have had 'apostasy' used as a 'label' against them, had undertaken acts that fall within a very different act, which includes a separate definition. This can, and has, caused many problems, where the 'accusers' label the 'accused' to be an 'apostate' when, in fact, the act undertaken is defined within a far less offensive category, and/or may well hold a far less legal sentence attached to it.

This means that there seems to be no clear cut border from one act of 'unbelief', which is often a minor offence and the offender still technically remains a devout Muslim, but gets labelled as having undertaken the most severe sin and crime against Islam, that of 'apostasy,' which is defined as the offender having left Islam. This crime can lead to the death sentence, but was not the act undertaken by the perpetrator.

The thesis aims to show that the very term 'apostasy' is portrayed as covering a very broad area of crimes, as there is no real consensus by Islamic jurists which clearly differentiate the act of *kufr*, *ilhad*, *zindiqah* or *irtidad / ridda*. It seems very possible that having such a indistinct and vague blurring in the definitions of the different crimes of unbelief, the jurists can charge a person with 'apostasy' and sentence them to death, when the genuine acts cannot be legitimately clarified as *irtidad*. This can be seen in the following Chapters of contemporary case studies. One example covers the case of Mahmoud Muhammad Taha in Sudan, who was executed on January 18<sup>th</sup> 1985, after being convicted with the blanket term of 'apostasy.' Assessing how his trial was undertaken will show that there were many misconceptions and perhaps, deliberate misinterpretations of his acts when compiling a case against him. Taha's case presents how rather easy it is to blame a person of one crime, and finally punish them with the most severe penalty, in order to remove or ostracise the accused from the community. The thesis aims to show that although the death penalty is not the legally recognised punishment for the minor crimes of *kufr*, or any other form of unbelief, the emphasis appears to be placed on the higher offence of having left Islam i.e. apostasy, as oppose to the lesser offence of insulting it, i.e. blasphemy.

In the next Chapter, the *tafsir* of the Qur'an and the verses that are perceived to be relevant to the act of apostasy from Islam will be assessed. Both forms of interpretations of the verse's meaning will be presented, to show that the very same verse of the Qur'an can be interpreted – and translated into English – to portray that the death penalty for an apostate is clearly written, or implied, in the Qur'an, while the same verse is interpreted by other exegetes to argue that there is – in no way – any capital punishment for this act to be found in the Qur'an.



## CHAPTER THREE.

### 3.0 APOSTASY IN THE LIGHT OF QUR'ANIC TAFSIR (EXEGESIS) AND HADITH

#### 3.1 Introduction.

Whether the specific act of a person's private change of religious belief can be questioned by other people is another area that this research aims to approach. It is also important to assess whether or not the act of a person simply changing their faith and the manners in which they worship are equal to treason. Therefore, for a Muslim who decides to follow another religion, or become an atheist, it is important to assess whether it can be determined that this act alone – plus any punishments related to such a loss of faith in one religion - is mentioned in the Qur'an or not.

*Shari'ah* rulings are based on the Qur'an and *ahadith* (Traditions). This Chapter will assess how these sources have been interpreted in reference to both defining the crime and establishing the legal sentences on those found guilty of either blasphemy (i.e. *Sabb Allah*, *Sabb al-rasul* / *Sabb al-nabi*) or apostasy (*riddah* / *irtidad*) from Islam.

This is in order to determine whether the death penalty for the act of apostasy can be identified with the interpretation of the Qur'anic text. To achieve this end, it is also important to analyse how the different opinions in Islamic jurisprudence argue for and against the death penalty through the *tafsir* (exegesis) of the relevant Qur'anic verses. The interpretations of these verses will present how the meaning of the Qur'anic message, has been interpreted to formulate the legal decisions taken for the crimes of blasphemy and apostasy. Added to the *tafsir*, it is also important to show how both sides of the interpretation (i.e. for and against the death penalty) have been emphasised through various *ahadith* (Traditions), more than the Qur'an. Examples will be provided which offers the very different interpretations of the same Qur'anic verse. The verses include 2:217, 5:54, 9:12, 4:89, 16:106, 3:85 and 4:137. Some other verse interpretations are

covered, that relate to the freedom of a person's religious belief, which include 22:17, 2:256, 109:1-6, 88:22-24, 10:99 and 18:29.

This will offer a clearer understanding that the death penalty is due to certain interpretations and translations of the sacred text, that underlies the established *Shari'ah* legal system. The law will be argued to depend, a great deal, on legal sentencing which in turn was established with strong political undercurrents. This opposes the opinion that the death penalty can be justifiably supported as a single message revealed in only one, unequivocal interpretation of the Qur'an. It then becomes possible to question whether the belief that the death penalty can be defended as the genuine Qur'anic message, as a 'revealed' punishment, or whether this entire aspect of the *Shari'ah* legal system should be viewed as being based purely on a human interpretation alone.

There will be a brief comparison in the differences of the legal opinions and the different sentences that are offered by the four *madhahib* (Islamic legal schools) concerning the conviction of men and women as apostates. Some treat both sexes to be held as equal for the same punishment, in receiving the death penalty, while one of the four disagrees. A short assessment will be provided of the differing time-scales that are provided in allowing for a convicted apostate to offer repentance. These range from three days, to several months, or for a life-long period, whereas other jurists argue that there will be no time available for repentance.

The conclusion will focus on the understanding of the Qur'anic message, and in Islam generally, to see that it is portrayed as a very tolerant religion, that is willing to compromise by accepting that the 'others' or 'infidels', should still exist as being 'valid,' while upholding the wrong belief systems. Also, it will assess whether the Qur'an actually states that the 'punishment' for those who lack Faith in God will occur in the Hereafter, or in this world. This opinion also will be seen to have 'two sides,' of how it should be 'correctly' interpreted and translated.



Within the Islamic schools of law there exists differing views of how apostasy can be defined, identified, acknowledged and sentenced against, through the *tafsir* of the Qur'an, *Sunnah* and *ahadith* which are quoted as relating to the act, in the defence for the *Shari'ah* sentences. One side argues for the death penalty, while the other side argues that punishment will be the wrath of Allah on Judgement Day, in the after-life, thus after a natural death. The fascinating part of this debate is that both positions are defended on the legal and theological hermeneutic *tafsir* interpretations of the very *same* Qur'anic verses. The Qur'an, *per se*, cannot differ, but the interpretation of the verse's meaning for the legal sentences, based upon it, certainly do.

In the analysis of the Qur'anic translation and interpretation it is essential to present both sides of the view that are based on the same sources of information. An analysis will attempt to assess the extent of the ambiguity, confusion and lack of any established consistency in the issue involving apostasy and apostates within Islam. As an ideal example of the interpretation of the same Qur'anic *Surah*, the following arguments base the framework of both views concerning the sentencing of apostasy within *fiqh* [Islamic jurisprudence]. Initially, here is an overview of the arguments that need to be developed and considered, while reading any translated version of the Qur'an.

Samual M. Zwemer cites various promotions by Muslim scholars, and translators of the Qur'an, who interpret the text's meaning being very positive – that there is no mention within the Qur'an that an apostate or blasphemer against either the Prophet Muhammad or the Qur'an or against Islam generally, will receive the death penalty. As an example, Zwemer cites an article that was published in the *Islamic Review* in November 1916 which states that :

It can be very safely asserted that Islam does not prescribe any punishment in this world for apostasy. This, for very obvious reasons, is due to the fact that the greatest triumphs of the True Religion of Allah have throughout lain in the fact of its being extremely rational, persuasive and human.<sup>712</sup>

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<sup>712</sup> Zwemer, M., Samual, 1975, *The Law of Apostasy in Islam : Answering the Question Why There are so Few Moslem Converts, and Giving Examples of Their Moral Courage and Martyrdom*, Amarko Book

Zwemer also makes reference to the commentaries presented by Muhammad Ali in his own interpretation of the Qur'an and the meaning of each verse within it where, in a commentary in one footnote, in reference to verse 2:217, Muhammad Ali declares that :

neither here nor anywhere else in the Holy Koran is there even a hint of the infliction of capital or any other punishment on the apostate.<sup>713</sup>

Zwemer refers again to the *Islamic Review*, which also comments on the *ahadith* that focus on the lifetime of the Prophet Muhammad, by highlighting the fact that, alongside the message of the Qur'an, :

the life of the Holy Prophet, whose each and every act has been minutely recorded by historians, likewise is destitute of any direct or indirect reference which might give us any hint as to the apostate having been condemned to die *solely for his change of faith*.<sup>714</sup> (Italics added for emphasis.)

However, the point that Zwemer then makes, is his general summary of his negative opinion towards Islam. He states quite the opposite to the view presented in the quotes he cited. The quotes promote Islam as a very tolerant and passive religion, but Zwemer promotes quite the opposite view. What Zwemer emphasises on, raises the very concept which stimulated and motivated this present research to be undertaken. It becomes quite apparent that there clearly seems to be – and especially in this particularly sensitive issue – that there will *always* be, 'two sides to every story.' Zwemer unequivocally indicates which side of the 'fence' he sits on, by announcing that, in reference to the quotes he has cited above, that :

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Agency, New Delhi, (First edition was published by Marshall Bros., Ltd., London, 1924), p9. Zwemer cites from 'Apostasy and its Consequences under Islam and Christianity,' *Islamic Review*, November 1916, p485ff, in his own Bibliography, p163. Also see O'Sullivan, Declan, 'The Interpretation of Qur'anic Text to Promote or Negate the Death Penalty for Apostates and Blasphemers,' in the *Journal of Qur'anic Studies*, Vol. III, Issue 2, 2001, Edinburgh University Press, p63

<sup>713</sup> Zwemer, *ibid.*, p9. Also see Ali, Maulvi Mohammad, 1920, *The Holy Qur'an : Containing the Arabic Text With English Translation and Commentary*, Ahmadiyya Anjuman-i-Ishaat-i-Islam, Lahore, India, in footnote 279, p99. Ali's further *tafsir* (exegesis) comments on this verse and other relevant verses will be presented in more detail below.

<sup>714</sup> Zwemer, *ibid.*, p9. O'Sullivan, Declan, 'The Interpretation of Qur'anic Text to Promote or Negate the Death Penalty for Apostates and Blasphemers,' *op.cit.*, p64



Such statements cannot be allowed to stand unchallenged. This little book<sup>715</sup> may be considered as a presentation of the facts on the other side of the question; and we leave the decision to the candid reader.<sup>716</sup>

The present researcher has looked into the arguments stated on both sides of the debate, as candid and sincere as possible, and the conclusions which will be stated in the following pages, present a diametrically opposed view to Zwemer. Both the theoretical concept and the practical reality of Islam provide evidence that it is an extremely tolerant religion and that the Qur'an actively promotes the believers of Islam to compromise with the other monotheist religions (mainly Judaism and Christianity) and also that the Qur'an advises Muslims to acknowledge the existence of - and not physically attack - believers of Polytheism (idol worshippers). This research aims to show that the main aim of Islam is to promote what the very word '*Islam*' translates into English as - 'submission.' This means that the *Islam* (submission) of one's life in every aspect, should be devoted to God alone, through *tawhid* (the Oneness of God). This work presents the counter-argument to Zwemer's perspective, as he seems to promote a very negative picture of Islam, which this researcher perceives as a 'non-Muslim and anti-Islamic attack' upon a religion that is not understood by those who either refuse to follow it, or assess it objectively.

The perspective presented by Zwemer leads into the area of scholarly work known as 'Orientalism'. Although an extensive discussion of Orientalism lies outside the boundaries of this doctoral research, it is important to mention Leila Ahmed's work. She makes the following point on how the issues of research ethics and cultural sensitivity relate to the concept of *tafsir* (exegesis) of any given text, and in particular, the Qur'an:

The tensions between the pragmatic and ethical perspectives, both forming part of Islam, can be detected even in the Quran, (*sic*).<sup>717</sup>

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<sup>715</sup> Here Zwemer makes reference to his book *The Law of Apostasy in Islam*, as this quote comes from the same book's *Preface*, p9

<sup>716</sup> Zwemer, *ibid.*, p9

<sup>717</sup> Ahmed, Leila, *Women and Gender in Islam: Historical Roots of a Modern Debate*, Yale University Press, New Haven & London, 1992, p63

Ahmed makes an interesting reference to what she believes 'Orientalism' is based on, and mentions the meticulous work in this field that has been undertaken by Edward Said in his well known work *Orientalism*<sup>718</sup>:

.....the Western and colonial narrative of Islam by the late nineteenth century appears to have been the result of a fusion between a number of strands of thought all developing within the Western world in the latter half of the century. Thus the reorganised narrative.....appears to have been a compound created out of a coalescence between the old narrative of Islam just referred to (and which Edward Said's *Orientalism* details) and the broad, all-purpose narrative of colonial domination regarding the inferiority, in relation to the European culture, of all Other cultures and societies, a narrative that saw vigorous development over the course of the nineteenth century.<sup>719</sup>

To highlight the complexity of the issues involved, Ahmed also makes the following point:

Orientalism is most familiar as the West's mode of representing, and misrepresenting, the Islamic world as a domain of otherness and inferiority; it is also familiar as a field of domination. But it should be noted that the discourses of Orientalism and those of establishment Islam are androcentric discourses of domination and that consequently in some ways they complement or endorse each other, even as in other ways they are at war.<sup>720</sup>

This Chapter also covers the different interpretations of the Qur'anic verses that are believed to deal with the acts of apostasy and blasphemy against Islam, where the same verses are interpreted and translated with very opposite messages. Some Islamic theologians and Islamic jurists present the message of the death penalty to be found in the Qur'an, whereas other interpretations cannot find this message anywhere in the same verse, or anywhere elsewhere in the Qur'an. The former view clearly supports the opinion presented by Zwemer (and others amongst that 'group'). It also defends and promotes the non-Muslim, anti-Islamic attack, which needs to be addressed much closer, so that a more

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<sup>718</sup> Said, Edward W., *Orientalism*, Penguin, London, 1995.

<sup>719</sup> Ahmed, *ibid*, p150

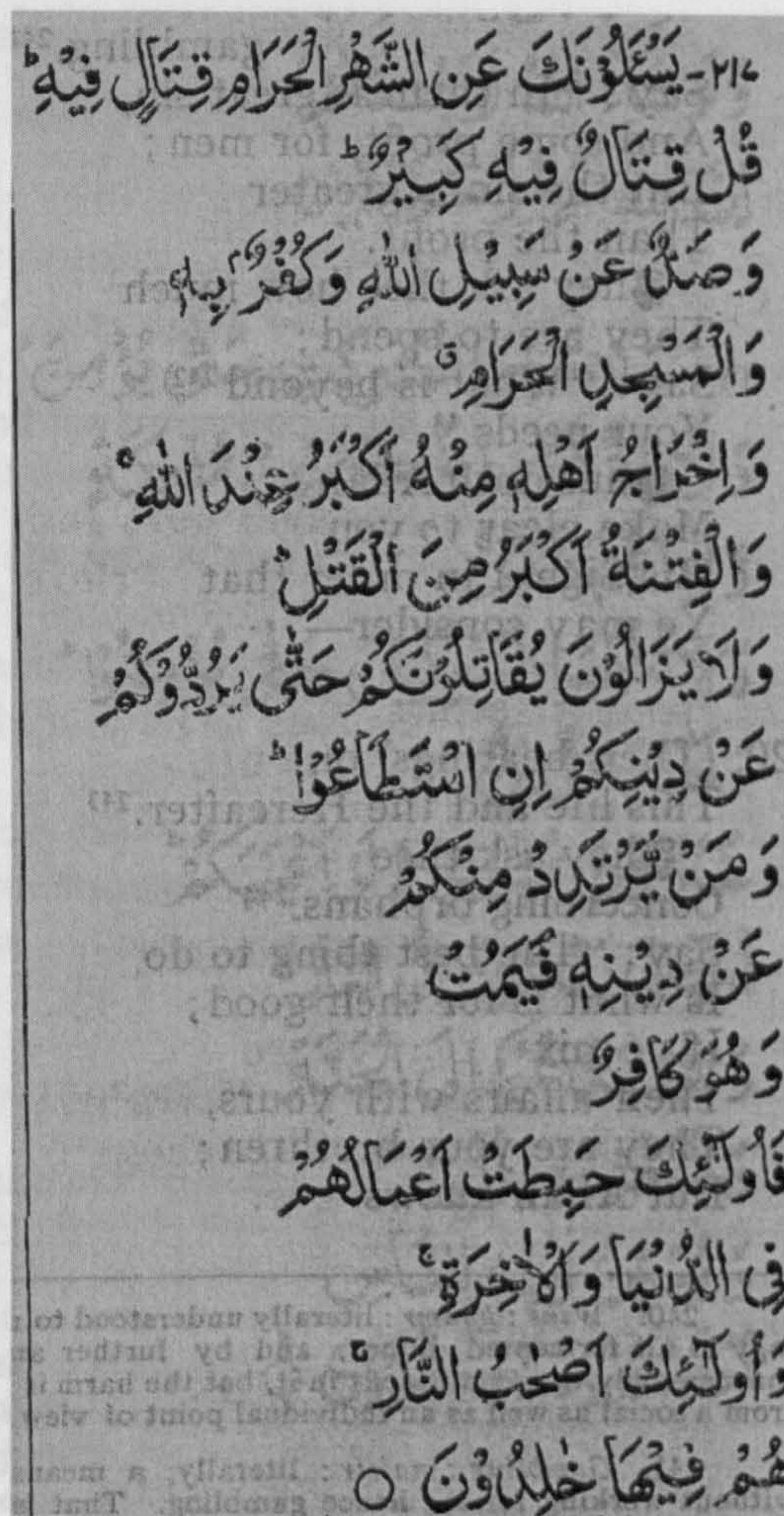
<sup>720</sup> Ahmed, *ibid*, in footnote 2 on p278-279



balanced view can be established between the opposing opinions. Hopefully an in-depth analysis of the Qur'anic verse translations and interpretations of the Arabic text will allow the opposing parties to 'agree to disagree'.

### **3.2 Interpretations both supporting and rejecting the death penalty for apostasy**

The 'death sentence' point of view follows the argument that is detailed by Mohammad Iqbal Siddiqi within his work *The Penal Law of Islam*, based on a translation of the verse from Surah Al-Baqarah 2, verse 217<sup>721</sup> :



The term apostasy [irtidad] has been used both in the Holy Qur'an and the *Sunnah*. The Holy Qur'an describes :

<sup>721</sup> This Arabic script of the Qur'an, as with all the following verses cited throughout this Chapter, come from Abdullah Yusuf Ali, *The Holy Qur'an : Text, Translation and Commentary*, published in three volumes, in Lahore, Pakistan, in 1969. Verse 2:217, Vol. 1, p85



‘And whoever turns his back from his religion and dies as an unbeliever, it is they whose works would be in vain in the world and the Hereafter, and they are the denizens of Hell-Fire, and therein shall they abide forever.’[2 : 217] Islam has looked down upon it as a very grave offence and has recommended capital punishment for it, the details of which can be found in the Holy Qur’an, the *Sunnah* of the Holy Prophet [peace and blessings of Allah be upon him] and the practice followed by his four righteous Caliphs.<sup>722</sup>

However, counter-balancing this argument, Hazrat Mirza Tahir Ahmad<sup>723</sup> states the opposing view in the argument of sentencing for apostasy, in his work *Murder in the Name of Allah*. He also uses a translation of the same verse, arguing that:

The Holy *Qur’an* states: ‘They will not stop fighting you until they turn you back from your faith, if they can. The works of those from among you who turn back from their faith and die in a state of disbelief shall be vain in this world and the next. These are the inmates of the fire, therein [sic] shall they abide.’ [2 : 218]

This means that whoever, out of fear of the sword [or the pain of punishment] decides to abjure Islam has a fundamental right to do so, but no one else has the right to declare him to be an apostate. The right to declare himself to be an apostate lies only with him. Nowhere in the Holy Qur’an has this right been granted to others. That is to say, one is free to renounce one’s own religion but has no right to impose renunciation of religion on others.<sup>724</sup>

<sup>722</sup> Mohammad Iqbal Siddiqi, *The Penal Law of Islam*, 1991, International Islamic Publishers, New Delhi, p96

<sup>723</sup> It is necessary to note that Mirza Tahir Ahmad is the founder of the *Ahmaddiyya* movement, a sect considered heretics and blasphemers by Sunni Muslims. The Ahmadis have been mentioned in the Pakistan Constitution, indicating that they are not to be referred to or considered to be legitimate Muslims, as they believe in their leader as being a ‘prophet.’ However, their comments are very useful in this given context, as they seem to promote Islam as being nothing more than a peaceful, passive, tolerant, compromising religion of Faith to God – and that this Faith is an internal struggle with each person on this earth. They also promote that the Qur’an propagates this very peaceful message; as opposed to what can be seen in the following pages, where those translators, who are considered as legitimate Muslims promote the legal death penalty for apostates from Islam, for simply privately changing their religion, through their own choice.

<sup>724</sup> Ahmad, Hazrat Mirza Tahir, *Mazhab ke Nam per Khoon (Bloodshed in the Name of Religion)*, late 1950’s, English Translation entitled *Murder in the Name of Allah*, translated by Syed Barakat Ahmad, 1989, Lutterworth Press, Cambridge, p.75. O’Sullivan, Declan, ‘The Interpretation of Qur’anic Text to Promote or Negate the Death Penalty for Apostates and Blasphemers,’ op.cit., p65. The different number of the verses quoted can lead a reader, who does not know the Qur’an, and only reads the reference to the verse numbers with not a translation of the text, to go and read the wrong verses, if the person was keen to locate the verse being referred to in the literature. Although this is a rather minor, peripheral link to the debate it is important to make a note of it.



One relevant point that needs to be mentioned, which can effect the method and findings in such research as this, is the issue of complexity, confusion and differing interpretations, which can be highlighted by the different numbering of the same Qur'anic *ayah* [verse].<sup>725</sup>

In his assessment of 2:217, 'Abdullah Ibn 'Abbas suggests that the word *yadoukum* in the verse means 'turning your back to *kuf*r from Islam.'<sup>726</sup> He also presents the main theme of the verse, and argues that it generally declares that 'they (the people of Mecca) will relentlessly continue to fight you (faithful Muslims) with the hope of 'turning you back to *kuf*r from Islam. And as for those who turned back, their work and good deeds would be nullified in this world and in the Hereafter.'<sup>727</sup> Although Ibn 'Abbas mentions that if any Muslim should apostatise and return to *kuf*r, then the value of their life when they were a Muslim, would become nullified and meaningless, but there is still no hint in his comments for any other punishment to be delivered, apart from this understandable 'lack of respect', should someone choose polytheism, or unbelief in general, rather than undertaking genuine faith in Islam.

Abdallah Ibn Omer Baydawi also makes a comment on this point, but makes another suggestion of what the concept of 'nullification' should refer to. He presents the fact that there is a disagreement amongst Muslim scholars regarding the nullifying affect of apostasy in reference to the 'good needs.' Al-Baydawi suggests that the phrase '*their works will bear no fruit in this life*' refers to the disbelievers, as the 'renunciation of their

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<sup>725</sup> It is necessary to note here that the verse involved can often be stated numerically different by each quotation; Siddiqi states that it comes from *Surah* 2 : *ayah* 217 and Ahmad quotes it as *Surha* 2 : *ayah* 218. A larger problem arrives in Abdullah Yusuf Ali's *Qura'n*, where he cites the verse 5:57, which is mentioned in most other copies of the *Qur'an* as 5:54, and this particular verse plays a very central role in the discussion of the punishment for apostasy. Some translators refer to the title of each *Surah* and the honorary phrase to Allah below it, counting as a separate verse, while others do not treat it such. Thus, the numbering of verses in reference to the *Surah* will differ by at least one number, depending on the translation, but the same verse text is being referred to here in each number reference. This is an important note to be aware of when analysing the translation of the Qur'anic texts within such a debate concerning the interpretation of apostasy in Islam.

<sup>726</sup> Ibn 'Abbas, 'Abdullah Ibn, '*Tanwir al-Miqbas min tafsir Ibn 'Abbas*,' 2000, Beirut: Dar al-Kutub al-Ilmiyyah, p38

<sup>727</sup> Ibn 'Abbas, *Ibid.*, p38

illusions and that they will miss Islam's earthly benefits, as well as being denied the reward in the Hereafter.<sup>728</sup>

Yahya b. Ali Al-Shawkani comments on 2:217 stating that, in this verse, God notifies the believers that the disbelievers will ceaselessly continue their fighting and their animosity against the believers, until they succeed in turning the believers back to *kufr*. In addition to this, he argues that the verse warns believers not to be disillusioned by the disbelievers and thoughtlessly respond to their efforts, while they attempt turn believers back into disbelief (*kufr*). The verse also points out that whoever does revert to *kufr*, they will have their good deeds nullified, should they die while still in their state of disbelief. Al-Shawkani also suggests that the verse reveals that another consequence of apostasy would be the deprivation from the Muslims' earthly entitlements and again, that they would not receive any reward in the Hereafter.<sup>729</sup>

Mahmud ibn 'Umar al-Zamakhshari comments on this verse by suggesting that the phrase '...they persist in fighting you...' points to the continuous hostility between Muslims and polytheists, and how the latter would unceasingly persist fighting Muslims until they enunciate Islam. Therefore, whoever would leave Islam and revert back to 'their din' (either *kufr* or polytheism) and die before repenting, they will inevitably lose the earthly gains/fruits/benefits of Islam, as well as failing to achieve the reward in the Hereafter. Al-Zamakhshari suggests that it was this verse (2:217) that al-Shafi'i used to form the basis of his opinion that apostasy would not nullify a person's good deeds ('*ammal*') unless the apostate died. However, Abu Hanifa believed that apostasy would nullify the good deeds, regardless of whether the apostate died or not, and also whether or not the apostate decided to repent.<sup>730</sup>

<sup>728</sup> Baydawi, Abdallah Ibn Omer, '*Anwar al-Tanzil wa asrar al-ta'wil*,' Beirut: Dar al-Kutub al-Ilmiyyah, 1999, p117-118

<sup>729</sup> Al-Shawkani, Yahya b. Ali, *Fath al-Qadir: al-Jami' bayn fanni al-Riwaya wa al-Diraya min 'ilm al-tafsir*, Vol. 1-4, Beirut: Dar al-Kutub al-Ilmiyya, 1996, Vol. I, p273

<sup>730</sup> Al-Zamakhshari, Mahmud ibn 'Umar, *al-Kashshaf 'an haqiq qawamid al-tanzil wa 'ayoun al-agawil fi wujuh al-Ta'wil*, 1987, Vol. 1-4, Beirut: Dar al-Kitab al-'Arabi. (The book is normally referred to as just *al-Kashshaf*), Vol. I, p258-259



Both at-Tabari<sup>731</sup> and Ibn Kathir<sup>732</sup> provided no commentary on 2:217. What is clear to note, is that none of the classical exegetes either hint or suggest any reference to the death penalty as being the appropriate punishment for apostasy, or that would derive from this verse.

In further reference to the verse 2:217, the first lines of this verse concern the question of whether Muslims have any permissibility to undertake fighting during the sacred months within the Islamic calendar.<sup>733</sup> Mohammad Ali, in his translation, argues that verse 2:217 offers the reasons which necessitate the raising of arms against the enemy, while forbidding any fighting in the sacred months, except by way of reprisal from oppressors. Thus, he argues that "It is an error to suppose that this verse legalises fighting in the sacred months."<sup>734</sup> The reasons for prohibition are given in Surah *Baqarah*, 2:189<sup>735</sup> and the ways of reprisal are raised in Surah *Baqarah*, 2:194.<sup>736</sup> Mohammad Ali relates an

<sup>731</sup> Al-Tabari, Abu Ja'far Muhammad ibn Jarir, *Jam'a al-Bayan 'an ta'wil ayat al-Quran*, Beirut: Dar al-Kutub al-'ilmiyyah, 1999

<sup>732</sup> Ibn Kathir, al-Qurayshi al-Dimashqi 'Imad al-Din Abi al-Fida' Isma'il, *Tafsir al-Quran al-'azeem*, Vol. I-4, 1995, edited and revised by al-Sheikh Khalid M Maharam, Beirut: al-Maktaba al-'Asriyya

<sup>733</sup> The four sacred months that are considered sacred are listed as *Rajab*, *Ziq'a'd*, *Zil-hajj* and *Muharram*, Ali, Maulvi Mohammad, *The Holy Qur'an*, ibid., in footnote 246, p90. However, they are cited as *Shawwal*, *Dhul-Qu'adah*, *Dhul-Hajjah* and *Muharram* by Dawood, N.J., *The Koran : With Parallel Arabic Text*, 1994, Penguin Books, London in footnote 2, p186. They are also cited as *Shawwal*, *Dhul-Qi'da*, *Dhu al-Hijja* and *Muharram* by Khadduri, Majid, *The Islamic Law of Nations; Shaybani's Siyar – Translated With An Introduction, Notes and Appendices*, 1966, The Johns Hopkins Press, Baltimore, USA, in footnote 98 on p94. The months are placed in the lunar calendar as : "The 'sacred months' during which, according to ancient Arab custom, all fighting was deemed utterly wrong, were the first, seventh, eleventh and twelfth months of the lunar calendar." Asad, Muhammad, *The Message of the Qur'an : Translated and Explained*, 1980, Dar al-Andalus Limited, Gibraltar, in footnote 171 on p42. However, Abdullah Yusuf Ali argues that "Some Commentators understand by this the four forbidden months in which warfare by ancient Arabian custom was unlawful, viz, Rajab, Zul-qa'd, Zul-hajj and Muharram. But it is better to take the signification of the four months immediately following the Declaration. Assuming that the Sura was promulgated early in Shawwal, the four months would be Shawwal, Zul-qa'd, Zul-hajj and Muharram, of which the last three would also be the customary Prohibited months." Ali, Abdullah Yusuf, *The Holy Qur'an : Text, Translation and Commentary*, 1969, Sh. Muhammad Ashraf, Kashmiri Bazar, Lahore, Pakistan, Vol I, footnote 1247 referring to Surah *Tauba*, 9, verse 2, on p438. He makes further related comments referring to Surah *Baqara*, 2, verse 194, in footnote 209 on p77.

<sup>734</sup> Ali, Maulvi Mohammad, *The Holy Qur'an*, ibid., in footnote 278, p98.

<sup>735</sup> "They ask you concerning the new moons. Say : They are times appointed for (the benefit of) men, and (for) the pilgrimage; and it is no righteousness that you should enter the houses at their backs, but righteousness is this, that one should guard (against evil); and go into the houses by their doors and be careful (of your duty) to Allah, that you may be successful." Surah *Al-Baqara*, 2:189, Ali, Maulvi Mohammad, *The Holy Qur'an*, ibid., p86

<sup>736</sup> "The prohibited month with the prohibited month, the prohibited with the prohibited: each act of aggression must be met with the same. If anyone defies the ban on fighting during the prohibited months or in the sacred places and attacks you, you are free to defy the ban in order to repel them. But fear of God and



event cited from Imam Muhammad Fakhr al-Din Razi<sup>737</sup>, which shows that the injunction proffered in 2:194 was never broken. The Prophet Muhammad requested that 'Abdulla bin Jahsh should bring him some news concerning an approaching caravan of the Quraish. While seeking the information required, 'Abdulla bin Jahsh caught three men at Nakhla, killed one of them and arrested the other two. 'Abdulla bin Jahsh was questioned, in order to discover whether the killing had occurred within a sacred month. He replied that the person was killed on the last day of Jamadi, in the early evening. The new moon of *Rajab* did not appear until after the sunset. The killing was allowed, as it was a defence against the acts of persecution that the three men had undertaken, which was also a part of the continuous campaign that was growing against the newly converted Muslims, their property and the Mosques, all within sacred territory. None of these things, or the sacred months, had been respected by the persecutors themselves, during their rampage of violence. The persecution became so intense and daily, that Ali states :

As there was no hope now that the enemy would cease persecution so long as there remained a single Muslim in Arabia – note the words *they will not cease fighting with you until they turn you back from your religion, if they can* – the Muslims were compelled to take up the sword in self-defence.<sup>738</sup> [Italics from the original text]

The people spoken of in this verse are the apostates, those who 'turn back from their religion.' Ali argues that a completely wrong impression is held by non-Muslims and by some Muslims also, that the Qur'an requires those who apostatise from Islam are to be put to death. He clearly states "but this is not true."<sup>739</sup> He also argues that some Christian

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do not exceed the limit; God aids those who fear Him and practise caution and restraint." (*Al-Baqara*, 2:195). The verse quoted here is cited as *Al-Baqara*, 2 verse 195 in Turner, Colin P., *The Quran : A New Interpretation*, (Textual Exegesis by Muhammad Baqir Behbudi), 1997, Curzon Press, Richmond, Surrey, UK, p17. It is important to note that this translation is by a Shi'a, and portrays the Shi'ite opinion of the Qur'anic message.

<sup>737</sup> Razi, Imam FaKhruddin, [sic], *the Tafsir Kahir of*, [sic], Ali, Maulvi Mohammad, *The Holy Qur'an*, ibid., pxxii. This is also cited as *Tafsir Kabir*, by Razi, Imam Muhammad Fakhr al-Din, in Ahmad, Mirza Bashir-ud-Din Mahmud, *The Holy Qur'an With English Translation and Commentary*, 1947, Sadr Anjuman Ahmadiyya, Qadian, India, Volume I, pl.

<sup>738</sup> Ali, Maulvi Mohammad, *The Holy Qur'an*, ibid., in footnote 278 on p98

<sup>739</sup> Ali, Maulvi Mohammad, ibid., in footnote 279, p98-99



writers have not interpreted the word *fa-yamut* correctly, as they define it to mean '*he shall be put to death,*' when its correct translation and meaning, is '*then he dies.*'<sup>740</sup>

He furthers his explanation of this verse, by it suggesting that the Qur'an simply says that the opponents of Islam forced themselves with their power, using fierce persecution and torture, to try and enforce apostasy amongst the Muslims. The Qur'an is warning that if a Muslim returns to unbelief, they would be a loser in this life as well as in the afterlife, as deserting from Islam would deprive them of the spiritual advantages gained through Islam, as well as the physical advantages that accrue to Muslims through the triumph of Islam. A vital point he concludes with is, as quoted by Zwemer above, at the beginning of this paper :

And neither here nor anywhere else in the Holy Qur'an is there even a hint at the infliction of capital punishment or any other punishment on the apostate.<sup>741</sup>

He also highlights another relevant point that :

it should be noted that though the word *irtidad*, which is the technical word for apostasy, is used only twice in the Holy Qur'an, here and in 5:54, a return to unbelief after belief is mentioned several times, and on not a single occasion is death stated to be the punishment for return to unbelief.<sup>742</sup>

Concerning the circumstances that followed the death of the Prophet Muhammad, which led several tribes to refuse to pay the *zakat* tax and some having reverted back to their former beliefs, prior to their conversion to Islam, this led the first Caliph, Abu-Bakr al-Siddiqi to undertake the episode of the *hurub al-ridda*, (The Wars of Apostasy). A detailed discussion for the reasons for and against the legitimacy of Abu-Bakr's *al-ridda*, are presented in a following Chapter, but one comment by Mohammad Ali, in reference to this campaign is very significant here.

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<sup>740</sup> Ali, Maulvi Mohammad, *ibid.*, in footnote 279, Italics are from the original, p98-99. Also see O'Sullivan, Declan, 'The Interpretation of Qur'anic Text to Promote or Negate the Death Penalty for Apostates and Blasphemers,' *op.cit.*, p66

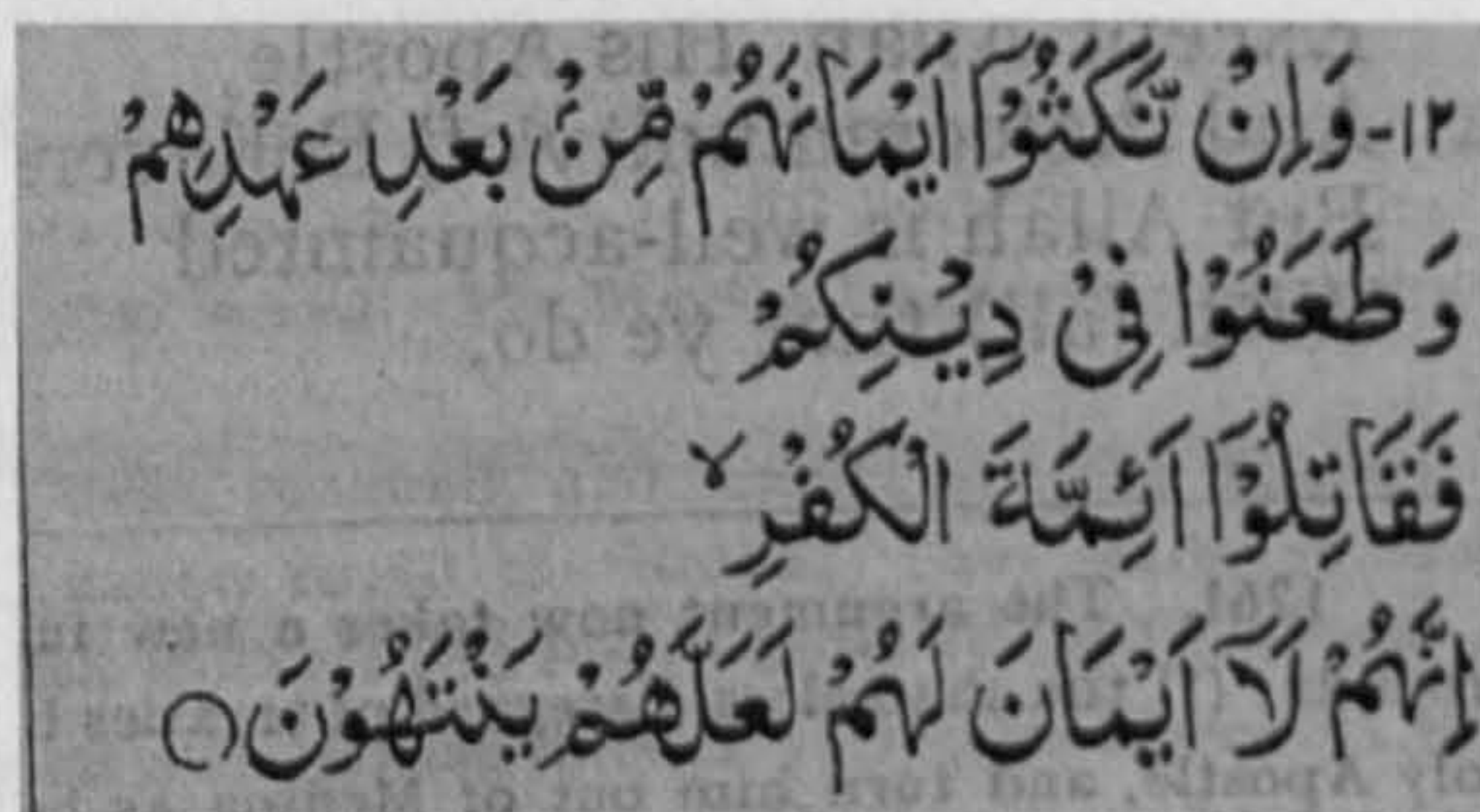
<sup>741</sup> Ali, Maulvi Mohammad, *ibid.*, in footnote 279, p99. Also see O'Sullivan, Declan, *ibid.*, p66

<sup>742</sup> Ali, Maulvi Mohammad, *The Holy Qur'an*, *ibid.*, in footnote 279, p99. Also see O'Sullivan, Declan, *ibid.*, p66



He offers a potential reason for such a punishment of the death penalty for apostates to have been introduced, which could have been due to the circumstances during the first eighteen months of the Muslim's residence in Medina. During that time they were in a state of constant warfare and battles with the Quraish and other Arab tribes then, so apostasy - in this specific situation - meant not the desertion of the individual's faith, but the deliberate removal from the 'Muslim cause' by some Muslims, who actively joined the hostile enemies of Islam. It could have been justifiable then, for Muslim Law to prescribe such a death penalty as a 'deterrent punishment' to avoid the rise in numbers of quisling traitors from their community. However, to emphasise that this was a 'human law,' for their own support, and defence of the Islamic community, Ali argues that on this very factor of killing apostates, that "the Holy Qur'an is silent."<sup>743</sup>

Another case of differing interpretations and translations of the Qur'an into English can be more blatantly seen in the work of Mohammad Tahir-ul-Qadri, *Islamic Penal System and Philosophy*. He translates Surah 9, *At-Tawbah*, (sometimes called *Al-Bara'at* as well) the verse 9:12 as :



But if they break faith after pledging it and ridicule your religion, then *decapitate* the leaders of disbelief so that they may be restrained from this act, for they have no regard for their pledged word.<sup>744</sup> [Italics added for emphasis]

One wonders how the word 'decapitate' could derive from the Arabic script, as most other translations interpret this verse with it meaning to only 'fight as self-defence,' as oppose to actively killing. Perhaps this is a case of where the translator manages to utilise

<sup>743</sup> Ali, Maulvi Mohammad, *The Holy Qur'an*, ibid., in footnote 279, p99. Also see O'Sullivan, Declan, ibid., p66

<sup>744</sup> Tahir-ul-Qadri, Mohammad, *Islamic Penal System and Philosophy*, 1995, Minhaj-ul-Qur'an Publications, Lahore, Pakistan, p385, Qur'an; 9:12



the ability of passing on their not-so-hidden-agenda in their translated 'message' of this verse. However, the same verse is translated by Mohammad Asad in his work *The Message of the Qur'an : Translated and Explained*, as :

But if they break their solemn pledges after having concluded a covenant and revile your religion, then fight against these archetypes of faithlessness who, behold, have no [regard of their own] pledges, so that they might desist [from aggression]<sup>745</sup>

He argues that here the phrase "if they break their solemn pledges after having concluded a covenant" refers to unbelievers who, having not renounced their own beliefs, they have concluded treaties of friendship with the Muslim community. Thus, the subsequent breaking of the solemn pledges suggests the breach of truth held by the Hudaibiyyah treaty that had been agreed upon by the Quraysh which, in return of the breach, led to the Muslim's conquest of Mecca in 8AH, the eighth year of the Hejira.<sup>746</sup>

He also argues that the word '*imam*' (of which *a'imma* is the plural) refers to not just a 'leader' but primarily, in this context, "a person who is an object of imitation by his followers" thus a 'model' or 'exemplar' or 'archetype.' Also the term *kufr* which usually refers to "denial of [or 'refusal to acknowledge'] the truth" is used here as "faithlessness" as it specifically relates to a deliberate breaking of the previously made solemn treaty and agreement.<sup>747</sup> The same verse is translated by Abdullah Yusuf Ali, in his work *The Holy Qur'an : Text, Translation and Commentary*, as

But if they violate their oaths after their covenant, and taunt you for your Faith – fight ye the chiefs of Unfaith : For their oaths are nothing to them : That thus they may be restrained.<sup>748</sup>

<sup>745</sup> Asad, Mohammad, *The Message of the Qur'an*, op.cit., p257, Qur'an; 9:12

<sup>746</sup> Asad, Mohammad, Ibid., footnote 18, p257

<sup>747</sup> Asad, Mohammad, Ibid., footnote 19, p257. Also see O'Sullivan, Declan, 'The Interpretation of Qur'anic Text to Promote or Negate the Death Penalty for Apostates and Blasphemers,' op.cit., p67

<sup>748</sup> Ali, Abdullah Yusuf, *The Holy Qur'an*, op.cit., Vol I, p441, Qur'an; 9:12

He comments that “not only did enemies break their oaths shamelessly but they even taunted the Muslims on their Faith and the ‘simple-minded’ way in which they continued to respect their part of the treaty, as if they were afraid to fight!”<sup>749</sup>

Another translation of the same verse is given by Mohammad Ali, in his work, *The Holy Qur'an : Containing the Arabic Text With English Translation and Commentary*.

He translates the verse as :

And if they break their oaths after their agreement and (openly) revile your religion, then fight the leaders of unbelief – surely their oaths are nothing – so that they may desist.<sup>750</sup>

He makes a very relevant commentary, concerning the interpretation of the text and the correct context for it to be taken in. He uses very strong language to express his conclusion :

Note, again, that those leaders of unbelief are to be fought against who *break their oaths after their agreement*, and further than that, *openly revile* the religion of Islam; even among these, it is the leaders who are to be particularly punished in fighting. The subject has been made so clear that one doubts whether lack of honesty or lack of brains is the real defect of those who seem to think that the Qur'an is here offering the sword or Islam as alternatives.<sup>751</sup>

[Italics from the original]

It is of interest to note that none of the last three translations of the Qur'an used here for the verse 9:12, use the word ‘decapitate.’

Ibn ‘Abbas comments on 9: 12, suggest that the verse points out that if the people of Mecca broke their agreements after having confirmed their covenant, and they then attacked believers of Islam with derogatory comments of disapproval and criticism, then

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<sup>749</sup> Ali, Abdullah Yusuf, *The Holy Qur'an*, Ibid., footnote 1260, p441,

<sup>750</sup> Maulvi Mohammad Ali, 1920, *The Holy Qur'an : Containing the Arabic Text With English Translation and Commentary*, Ahmadiyya Anjuman-I-Ishaat-I-Islam, Lahore, India, p399, Qur'an; 9:12

<sup>751</sup> Maulvi Mohammad Ali, 1920, *The Holy Qur'an*, Ibid., footnote 1038, p p399. Also see O'Sullivan, Declan, ‘The Interpretation of Qur'anic Text to Promote or Negate the Death Penalty for Apostates and Blasphemers,’ op.cit., p68



the believers may fight against the leaders of such disbelief. One example of the leaders referred to by the verse is argued to be Abu Sufiyan<sup>752</sup> and his tribe. The verse is argued to suggest that the oaths made by those who had then broken the covenant, have lost their meaning and value as being part of the community so, in fighting them, the believers may stop the unbelievers violating the treaties they had agreed upon.<sup>753</sup>

Al-Baydawi suggests that in 9:12, the verse states that those who had made a treaty will then violate their oath of belief, or of honouring their agreements made, and will decide to taunt the believers because of their faith, by inventing lies and by distorting the Islamic rulings. Al-Baydawi also argues that the verse urges believers to fight the chiefs of the unfaithful, because the oaths they declared are no longer genuine. Had the oaths been true, they would not have violated them, nor defamed Islam. It is argued that this verse is thought to be a proof on defending the ruling of the death penalty on the *dhimmis*, if they violate their oaths and defame Islam. However, others believe that the verse could be employed as the basis for not accepting an apostate's repentance. Al-Baydawi does not agree with this point, as he argues that this ruling may have been revealed in reference to a specific group of people, and would not be a broader, general message.

Al-Baydawi concluded that 9:12 restricted the purpose of believers in fighting, by restraining the levels of harm-doing to be restricted with certain limits.<sup>754</sup> It also has to be noted that if the death penalty is focused on the *dhimmis*, then these are believers of other religions rather than Islam, who live within the Islamic community. Therefore, this death penalty is not mentioned at all in reference to Muslims who apostatise, and revert to disbelief. In this case, the death penalty cannot be related to Muslims who apostatise *from* Islam.

<sup>752</sup> Abu Sufiyan Ibn Harb was one the Qurayish's leaders who persistently opposed the Prophet before he converted to Islam before the conquest of Mecca. He is also the founder of the Umayyid dynasty.

<sup>753</sup> Ibn 'Abbas, '*Tanwir al-Miqbas min tafsir Ibn 'Abbas*,' op.cit., p199

<sup>754</sup> Baydawi, Abdallah Ibn Omer, '*Anwar al-Tanzil wa asrar al-ta'wil*,' Vol I., op.cit., p397

Al-Shawkani's comments on verse 9: 12 suggest that it refers to the breach, violation and infringement (*nukt*), which is derived from 'breaking a spun strand'.<sup>755</sup> Al-Shawkani explains that this means that for those who infringe on their oaths and the agreements that were made with the believers, and should they attack and defame Islam, then it will become a mandatory duty for Muslims to fight against them, in self-defence. Al-Shawkani suggest that some scholars, including Abu Hanifa, employ this verse to defend their view that the *dhimmi*s are to be killed should they defame Islam, as they would be violating their oath. Also, both Maliki and al-Shafi'i permit the capital punishment for *dhimmi*s if they merely defame Islam because, in their opinion, by attacking Islam with disapproval and criticism, this would equate to being a violation of the oath that had been previously made.<sup>756</sup>

Al-Shawkani also mentions that, according to one saying that is attributed to Ibn 'Abbas, verse 9:12 is addressed to the Prophet, by informing him that if anybody was to violate their oath that they had agreed upon with the Prophet, they should be fought against. However, there is also another opinion, which is based on a different interpretation of this verse, as it states that those who are mentioned in this verse are *yet* to be fought, so this view concludes that the verse is a warning of future actions of people who will attack Islam as a non-Muslim, or reject Islam as a Muslim.<sup>757</sup>

At-Tabari makes a very interesting commentary on 9:12, and cites the opinion presented by Al-Suddi. Al-Suddi interprets this verse by referring to the oaths mentioned in it, as referring to the agreement and acceptance of Islam. He suggests that the verse declares the oaths that were made, actually confirmed that the people who signed them agreed to be bound to the commitment of Islam, therefore converting to become a Muslim :

عهدهم المذى عاهدوا على الاسلام  
They agreed (oaths) to abide by the religion of Islam<sup>758</sup>

<sup>755</sup> Reference to the same meaning can be found in Q. 16: 92.

<sup>756</sup> Al-Shawkani, , *Fath al-Qadir: al-Jami' bayn fanni al-Riwaya wa al-Diraya min 'ilm al-tafsir*, Vol. 2, op.cit., p435-436

<sup>757</sup> Al-Shawkani, Ibid., Vol. 2, p437-438

<sup>758</sup> Al-Tabari, citing Al-Suddi in *Jam'a al-Bayan 'an ta'wil ayat al-Quran*, Vol. 6, op.cit., p330



However, this is the only commentary where there is a slight hint, and even a vague suggestion, that this verse could suggest that the oath being made was the 'covenant' of Islam. Therefore, Al-Suddi's conclusion implies that in breaking such an oath this would, in fact, be *ridda*, by rejecting the covenant made, which would be breaking the agreement with the person's faith in Islam.<sup>759</sup> As it is the only suggestion of the covenant representing the conversion in faith, it is obvious that *Shari'ah* rulings cannot be based on just one opinion.

Al-Zamakhshari comments on 9:12 by assessing that the verse ordains Muslims to fight against those who turn away from Islam, and move back into disbelief. He argues that the verse also mentions Muslims are entitled to attack the leaders of disbelief, who infringe their oaths and the agreements that were undertaken, including those whom defame and attack Islam with disapproval and criticism. Some scholars base the opinion of killing the *dhimmi*s on this verse, by interpreting the verse to mean that the oath with they made with Muslims would be nullified if they started to defame Islam. However, Zamakhshari also points out, as did al-Baydawi, that nonetheless, the verse restricts the level of fighting that can be undertaken only up to a certain point. Therefore the verse suggests great restraint in the amount of harm-doing that can be achieved.<sup>760</sup>

Ibn Kathir presents the view that 9:12 reveals the message that if the polytheist idolators, whom had conducted the agreement of 'peace treaties' with Muslims, and set-out the treaty for an appointed term, then if they broke the agreed terms made in the treaties and covenants by attacking Islam with comments of disapproval and criticism, then they are to be fought. The fighting would be a necessary means in which to refrain the idolators physical attacks, and a manner to restrain their levels of disbelief, rebellious deeds and the transgression from the oaths, that they had initially become willing to agree with.<sup>761</sup>

<sup>759</sup> Al-Tabari, Ibid., Vol. 6, p330

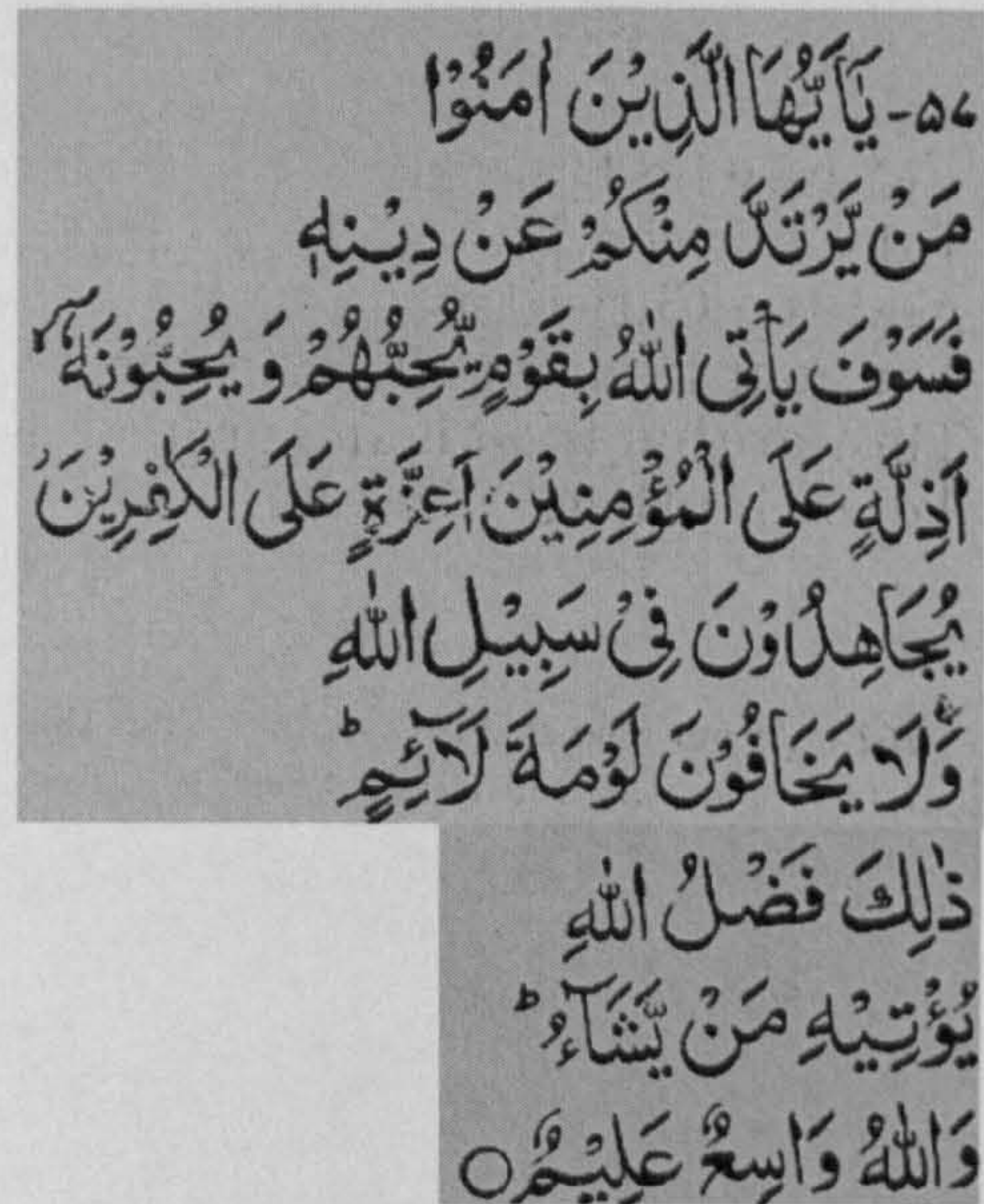
<sup>760</sup> Al-Zamakhshari, *al-Kashshaf*, op.cit., Vol. 2, p251

<sup>761</sup> Ibn Kathir, '*Tafsir al-Quran al-'azeem*,' op.cit., Vol. 2, p310



Following this verse, as stated above by Mohammad Ali, in his reference to verse 2:217, the word *irtidad* is used only twice in the Qur'an, in 2:217 and 5:54. The next discussion will assess the different interpretations of the second verse in question, 5:54.

### Surah Al-Ma'iah, 5:54



O ye who believe! If any from among you turn back from his Faith, soon will Allah produce a people whom He will love as they will love Him, - lowly with the believers, mighty against the Rejecters, fighting in the Way of Allah, and never afraid of the reproaches of such as find fault. That is the Grace of Allah, which He will bestow on whom He pleaseth: and Allah encompasseth all, and He knoweth all things.<sup>762</sup>(5:57)

Abdullah Yusuf Ali makes a reference in his comments on this verse 5:54 to a previous verse that he cites as 5:52, as they intertwine with the general view that :

As 'most men are rebellious' (v.52), it is inevitable that there should be apostates even from such a religion of reason and common sense as Islam. But here is a warning to the Muslim body that they should not repeat the history

<sup>762</sup> Arabic script and translation from Ali, Abdullah Yusuf, *The Holy Qur'an*, op.cit. 5:57, Vol.1, p261. (This verse is cited as 5:54 in most other copies of the Qur'an, so it will be easier to refer to it as '5:54' in the discussion of it).



of the Jews, and become so self-satisfied or arrogant as to depart from the spirit of God's teaching. If they do, the loss will be their own. God's bounty is not confined to one group or section of humanity.<sup>763</sup>

On a similar interpretation with this analysis, Mohammad Ali argues that this verse was revealed to present comfort for the Prophet Mohammad, following the strategic application of tactics by the Jews, in their aim to apostatise those who had recently converted to Islam. Interestingly enough, he also suggests that this verse, could potentially refer to the role of Abu Bakr, during the *Al-Ridda* campaign. Therefore this verse was revealed :

to the Prophet against the machinations of the Jews, who made plots of every sort to make the Muslims apostatise. Who were the particular men or tribes that apostatised, and who were those who came in their place, is matter which lies within the sphere of history. The Prophet's life in Medina, however, affords clear proof that apostasy never thinned the ranks of Islam, and if one man apostatised, a number of people joined the ranks of Islam and fought in its defence. Three tribes are said to have apostatised towards the close of the Prophet's life, but as these were dealt with in the time of Abu Bakr, the prophetic reference in these words is clearly to Abu Bakr's caliphate, which witnessed a fulfilment of this prophecy when the companions of the Holy Prophet, immediately after his death, had to suppress a very great rising, which would ultimately have led to the apostasy of whole tribes. Thus Abu Bakr and his helpers and advisers are the people who are here spoken of as loving Allah and being His beloved ones.<sup>764</sup>

Muhammad Asad interprets the first half of the first sentence in this verse as "O you who have attained to faith! If you ever abandon your faith"<sup>765</sup> and makes a very interesting interpretation of its meaning. In his *tafsir* note, he argues that the Arabic script should be literally translated to mean : "whosoever from among you abandons his faith" and explains that this sentence actually refers to a specific act that some Muslims might have

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<sup>763</sup> Ali, Abdullah Yusuf, *The Holy Qur'an*, op.cit. Vol.1, in footnote 767 on p261. Also see O'Sullivan, Declan, 'The Interpretation of Qur'anic Text to Promote or Negate the Death Penalty for Apostates and Blasphemers,' op.cit., p68

<sup>764</sup> Ali, Mohammad, *The Holy Qur'an*, ibid., in footnote 710 on p269

<sup>765</sup> Asad, Muhammad, op.cit., in footnote 76 on p155

undertaken, by making allegiance with hostile non-Muslims who were anti-Islamic activists. Hence, Asad's assessment of the verse's meaning is that it relates to some form of being a 'traitor' to Islam and to the Muslim community : "in result of having placed his reliance to non-Muslims who are hostile to Islam, and having taken them for his 'allies' and spiritual mentors."<sup>766</sup>

In a summary of verse 5:54, which was revealed towards the end of the Prophet's life, Mohammad Selim El-Awa, states that it refers on how to treat an apostate (*murtadd* – مرتد) from Islam, and emphatically claims that "In this verse the *murtadd* is certainly exempt from any sort of punishment in this life."<sup>767</sup>

In another reference to those who had deliberately apostatised having recently become Muslims, as their way of reducing the value of Islam and reducing the Islamic community in its size, Mohammad Ali makes a very similar interpretation for the meaning of verse *Al-Imran* 3:71. He argues that it has a strongly linked relationship to that of 5:54. He translates it as :

And a party of the followers of the Book say: "Avow belief in that which has been revealed to those who believe in the first part of the day, and disbelieve, at the end of it; perhaps they may go back;"<sup>768</sup>(3:71)

In his *tafsir* on 3:71, Mohammad Ali reiterates the point that this relates to the Jews who had specifically planned to pronounce a Islam as false religion. They embraced Islam, as stated at the beginning of the verse, and then later on they deliberately denied finding any truth in the message of both the Qur'an and from the Prophet Muhammad, in order to confuse and create an ambiguity amongst the genuine believers. The main aim of this act was in order to cause a widespread concern and in the hope that many new converted Muslims would apostatise back to their former beliefs.<sup>769</sup> 'Ali feels that the most

<sup>766</sup> *ibid.*, in footnote 76 on p155

<sup>767</sup> El-Awa, Mohammad, Selim, *Punishment in Islamic Law : A Comparative Study*, American trust Publications, Indianapolis, 1982, p50. Also see O'Sullivan, Declan, 'The Interpretation of Qur'anic Text to Promote or Negate the Death Penalty for Apostates and Blasphemers,' *op.cit.*, p69

<sup>768</sup> Ali, Mohammad, *op.cit.*, p164

<sup>769</sup> Ali, Mohammad, *Ibid.*, in footnote 448 on p164. Also see O'Sullivan, Declan, 'The Interpretation of Qur'anic Text to Promote or Negate the Death Penalty for Apostates and Blasphemers,' *op.cit.*, p66



convincing argument to prove, beyond any doubt or ambiguity, that death *was* not – and *is* not – a punishment for apostasy, is contained within these very plans and actions by the believers of Judaism, while they lived under Muslim dominance and rules, in Madina. These acts with the specific aims were prevalent. Referring to the interpretation of 3:71 Mohammad Ali declares that :

.....the meaning would be that they should avow a belief in the truth of Islam in the morning and deny it in the evening, and thus perturb the minds of those who had gone over to Islam, creating the impression that the religion of Islam was a false religion, otherwise the Jews, who possessed the scriptures, could not have apostatised after they had embraced Islam. The adoption of this plan, *is a clear proof that apostates were not put to death.*<sup>770</sup>

[Italics added for emphasis]

Not accepting this interpretation would raise the question 'how could people be living under Muslim rule and conceive of such an overtly visible concept in an attempt to openly discredit Muslims and Islam, if this act of apostasy was punishable by death?' As stated by another Qur'anic analyst, covering this point on the content of *Al-'Imran*, 3:71, he argues :

How could it be possible for the Jews to have enacted this plan if death was a penalty for apostasy? Had anyone been executed for committing this crime, that would have been a deterrent for others who would not follow in their footsteps. The advocates of the death penalty urge that this verse merely refers to a Jewish philosophy which was never put into practice by them. Even if it was merely a philosophy, this verse is conclusive proof of there being no punishment in this world for apostasy because the Jews could never have conceived the idea had there been such a punishment.<sup>771</sup>

'Abd al-Razzaq Nu'man al-Samara'i, in his work *Akham al-Murtadd fi'l-Shari'ah al-Islamiyyah*, has gathered several *tafsir* comments presented by different exegetes, all which define the interpretation of the verse 5:54, as being merely a warning and some level of prophetic vision, foreseeing the episode of *hurub al-ridda* (The Wars of

<sup>770</sup> Ali, Mohammad, Ibid., in footnote 448 on p164. Also see O'Sullivan, Declan, ibid., p70

Apostasy), following the death of the Prophet Muhammad. As can be noted by his collection of these views :

Al-Samara'i has collected opinions of exegetes, like al-Tabari, al-Nishapuri, al-Qurtubi, al-Zamakhshari, al-Razi, and al-Tabarasi, on the interpretation of this verse. Their opinions may be summed up by saying that the verse embodies a warning and a prophecy. The warning conveyed was that apostasy would not affect Divine purposes in the least. The prophecy foreshadowed the apostasy of several tribes on the death of the Prophet and gave the glad tidings that they would be replaced by God-loving and God-loved true Muslims. The main inference derivable from the verse is that there is no punishment for apostasy to be enforced in this world, for such human aberrations cannot frustrate God's purposes.<sup>772</sup>

Ibn 'Abbas argues that this verse is addressed to the Arab tribes Asad and Gafan, and also some people from Kindah and Mirar, who had apostatised after the death of the Prophet Muhammad. Ibn 'Abbas argues that this verse states that Allah will willingly bring forth those whom He loves and those whom genuinely love Him in return.<sup>773</sup>

Al-Baydawi explains that 5: 54 is an illustration of where God informs believers about things that would happen, before their occurrence. In this specific case, this means that Gods presents the warning that some tribes would revert back to disbelief after finding their belief and faith in Islam.<sup>774</sup>

Al-Shawkani argues that verse 5:54 is an elaboration on the rules regarding apostates, as it states that any Muslim who seeks an allegiance with the disbelievers is, in itself, an act of disbelief. He also points out that those referred to in the verse, whom Allah 'will love as they will love Him' are noticeably Abu Bakr, his army of the Companions and the Successors with whom fought with him against the tribes during *hurub al-ridda*. As an extension to this, the verse is argued to refer to all believers who may fight apostates in

<sup>771</sup> Ahmad, Hazrat Mirza Tahir, *Murder in the Name of Allah*, op.cit., p79

<sup>772</sup> Rahman, S.A., *Punishment of Apostasy in Islam*, op.cit., p46. Also see O'Sullivan, Declan, 'The Interpretation of Qur'anic Text to Promote or Negate the Death Penalty for Apostates and Blasphemers,' op.cit., p70

<sup>773</sup> Ibn 'Abbas, '*Tanwir al-Miqbas min tafsir Ibn 'Abbas*,' op.cit., 126



the future. Al-Shawkani also concluded that this verse was revealed as a warning to believers, as He knew full well, in His omnipotent knowledge, that there will come a time when some people will apostatise from Islam, and reject it.<sup>775</sup>

At-Tabari presents the view that in verse 5: 54, Allah warns all believers not to revert from the religion of Islam into disbelief. At-Tabari includes both Judaism and Christianity in the category of 'disbelief,' along with any other religion or pagan form of belief. He furthers his comment by explaining that the verse declares that even if any such disbelief did occur, it will not harm Allah, who will then produce a people whom He will love as they will love Him. The verse emphasises that Allah will bring forth genuine believers who will not change their faith, or revert away from Islam through apostasy, and who will be far better people than those who reject Islam. At-Tabari concludes that the verse's warning is related to what is in Allah's Omnipotent knowledge, making reference to the fact that some people are bound to turn away from Islam, following the death of the Prophet Muhammad.<sup>776</sup>

Zamakhshari makes a very similar comment as the one presented by Al-Baydawi. He suggests that verse 5:54 is an excellent example where God informs believers about certain incidents that will occur, before it happens. The verse is said to have been revealed in reference to *al-ahl-rida* (The people of Apostasy).<sup>777</sup>

Ibn Kathir argues that in verse 5: 54, it can be seen that Allah emphasises that He is Almighty, by declaring that whoever reverts from the Truth and moves into falsehood, then Allah will simply replace them with those whomever is a better, stronger and more righteous person, following Allah's religion and Law.<sup>778</sup>

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<sup>774</sup> Baydawi, Abdallah Ibn Omer, '*Anwar al-Tanzil wa asrar al-ta'wil*,' Vol I., op.cit., p271

<sup>775</sup> Al-Shawkani, , *Fath al-Qadir: al-Jami' bayn fanni al-Riwaya wa al-Diraya min 'ilm al-tafsir*, Vol. 2, op.cit., p64-65

<sup>776</sup> Al-Tabari, *Jam'a al-Bayan 'an ta'wil ayat al-Quran*, Vol. 4, op.cit., p622-623

<sup>777</sup> Al-Zamakhshari, *al-Kashshaf*, op.cit., Vol. I, p644

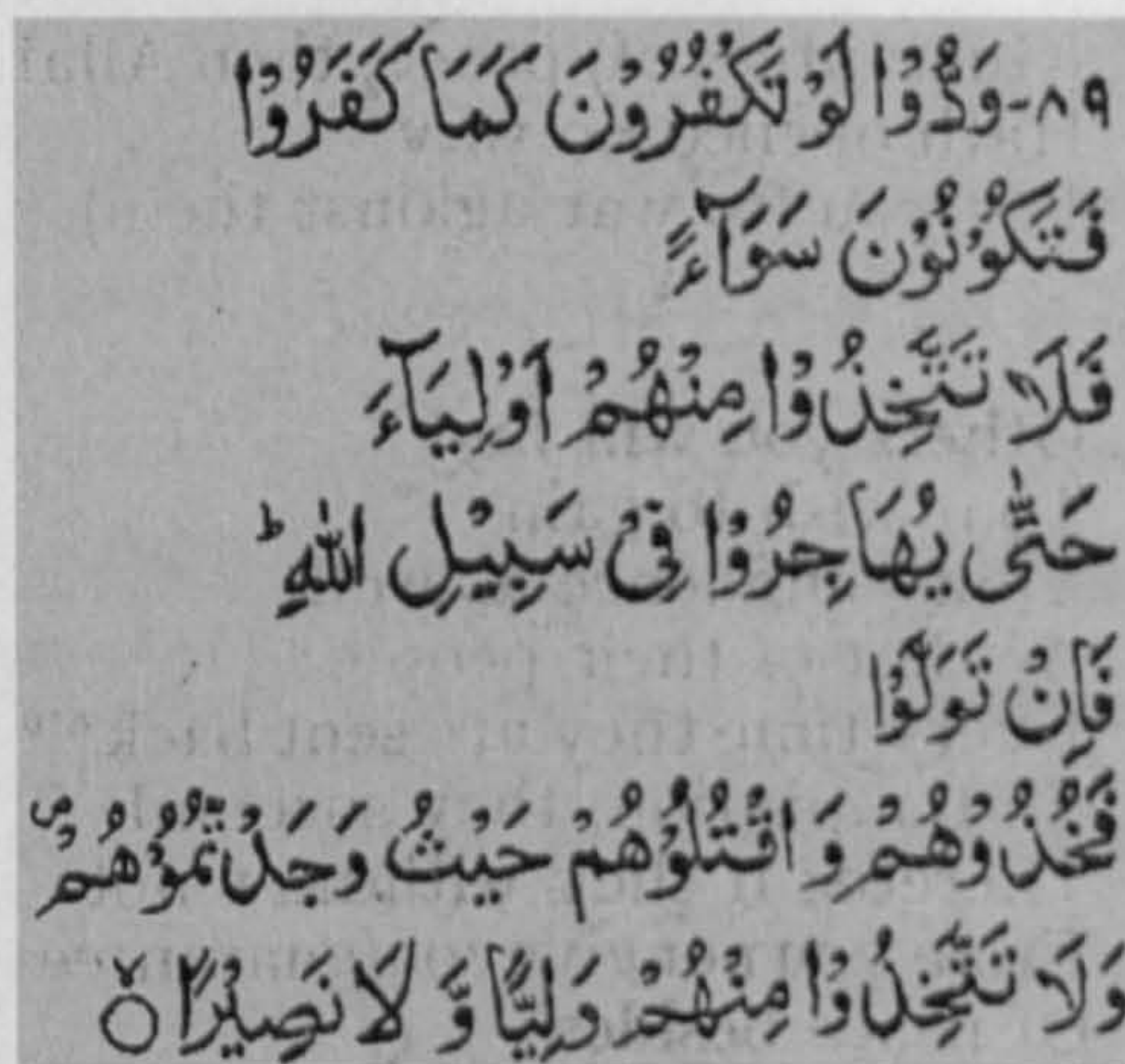
<sup>778</sup> Ibn Kathir, '*Tafsir al-Quran al-'azeem*,' op.cit., Vol. 2, p66



When assessing all the commentaries that have been presented by the classical exegetes on verse 5:54, it is very important to note here that, what becomes clear again in this verse, is that none of the classical exegetes either hint or suggest any reference to the death penalty on earth as being an appropriate punishment for apostasy. The revealed message from God is quite the opposite.

Another verse that seems to have some interpreters and translators inclined towards promoting the death penalty for apostates from it, is *Al-Nisa'*, 4:89. This verse most certainly requires some detailed analysis, to present another, more appropriate, explanation for its meaning :

#### Surah Al-Nisa', 4:89



They but wish that ye should reject Faith, as they do, and thus be on the same footing (as they) : But take not friends from their ranks until they flee in the way of Allah (from what is forbidden). But if they turn renegades, *seize them and slay them wherever you find them*; And (in any case) take no friends or helpers from their ranks.<sup>779</sup> (4:89)

[Italics added for emphasis]

This verse, together with the verse that follows it, have created some great interest throughout the Qur'anic literature, on the different *tafsir* (exegesis) commentaries on the 'acceptable' meaning of the verse. Abdullah Yusuf Ali suggests that the phrase 'seize them and slay them' specifically refers to the death penalty that was the legal sentence on

<sup>779</sup> Arabic script and translation from Ali, Abdullah Yusuf, *The Holy Qur'an*, op.cit. 4:89, Vol.1, p207



a person who had repeatedly undertaken a desertion from the community.<sup>780</sup> Even after the conviction of the crime as a deserter, there were two cases that held exemption from the death penalty. One situation would be if the deserter took their refuge asylum with a tribe that held a peace-treaty with the Islamic community. Such a location within a peace-treaty tribe, would be a safe location, as the tribe could :

be trusted to keep the man from fighting against the forces of Islam – in the modern phrase, to disarm him and render him harmless. The second case for exemption is where the man from his own heart desires never to take up arms against Islam, though he does not wish to join the forces of Islam, to fight against a hostile tribe (perhaps his own) fighting against Islam. But he must make a real approach, giving guarantees of his sincerity. In the modern phrase he would be 'on parole.'<sup>781</sup>

The perspective in this *tafsir* is also supported by the observations that Mohammad Ali presents in his commentary on these verses 4:89-90. He presents the problem that exists with interpretation of a verse's meaning, as they can be interpreted as not relating to, or promoting, the death penalty for apostasy in any way, while other commentators and translators could equally seek to read into it a certain meaning that promotes the death penalty, as what has occurred over 2:217, as discussed above. Ali argues that for any neutral observer reading the Qur'an, this verse 4:89 should be obviously understood as :

showing clearly that even waverers were not to be killed or fought against if they refrained from fighting, though they may have gone over to unbelief after accepting Islam. The logic of deducing the punishment of death for apostates from this verse is as absurd as that which seeks to draw a similar conclusion from 2:217. The commentators agree that the persons referred to in this verse were unbelievers and not Muslims.<sup>782</sup>

He raises an important point, which relates this verse 4:89 with another verse 2:193, which had been revealed before this one. The main theme in the message of 4:89 is that

<sup>780</sup> Ali, Abdullah Yusuf, *ibid.*, Vol.1, in footnote 608, p207

<sup>781</sup> *Ibid.*, in footnote 608, p207

<sup>782</sup> Ali, Maulvi Mohammad, *The Holy Qur'an*, op.cit., in footnote 610, p226. Also see O'Sullivan, Declan, 'The Interpretation of Qur'anic Text to Promote or Negate the Death Penalty for Apostates and Blasphemers,' op.cit., p71

Islam has utter tolerance and protects of all religions that worship God, (*ahl al-kitab*)<sup>783</sup> and it does not promote the universal propagation of Islam as the *only* pure path of religion to reach God. He argues that the message from this verse also promotes the fact that Islam also, does not have to be followed by every human being. Ali specifically highlights this view, and its importance, by declaring that :

Note also that we have here the clear injunction that if any people offered peace they were not to be fought against, and the revelation of this verse is clearly later than the revelation of the words occurring in 2:193, 'And fight with them until there is no persecution and the religion should be only for Allah,' thus showing that by *religion being only for Allah* was only meant the establishment of religious freedom and the ceasing of persecution, and not that the whole world should confess the religion of Islam.<sup>784</sup>

[Italics from original text]

S.A. Rahman argues quite the opposing view with his verse, and those that follow it (from 4:89-to-92). He argues that they offer a very clear message, by instructing Muslims how to react against hypocrites who pretend to be genuine believers. No matter how offensive their behaviour may be, as long as it is not a physical attack, the message is to be patient and wait for them to receive their message of Truth with connection to God. However, it is only in defence of a physical that the Qur'an promotes the natural reaction of self-defence, for personal survival. In no verse in the Qur'an does it encourage Muslims to initiate the attack on non-believers.

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<sup>783</sup> *Ahl al-kitab* – 'The People of the Book,' which is the title which refers to the religions that hold revealed scriptures, i.e. Judaism, Christianity and Islam. A more detailed discussion of this group will be discussed below here.

<sup>784</sup> Ali, Maulvi Mohammad, *ibid.*, in footnote 610, p226



However, having stated the positive side of the debate, there are other interpretations and translations of this verse which openly present the very opposite interpretation as the meaning of message. As an example, Majid Khadduri, in his work *War and Peace in the Law of Islam*, quotes 4:89 in this form :

Why are ye two parties on the subject of the hypocrites, when Allah has cast them off for their doing?.....Take therefore none of them for friends, till they have fled their homes for the cause of Allah. If they turn back, then seize them, and slay them wherever ye find them.....(V:90-91)<sup>785</sup>

In Khadduri's interpretation he openly states that verse 4:90 has unquestionable clarity, and deals with the punishment for apostasy, in particular. He claims that the verse:

specifically states that death sentence should be imposed on those who apostatise or turn back from their religion, all commentators agree that a believer who turns back from his religion (*irtada*) openly or secretly, must be killed if he persists in disbelief.<sup>786</sup>

Samuel Zwemer also presents the appraisal of how to interpret verse 4:90, based on the comments by Baidhawi. Zwemer declares that :

It will be sufficient to quote what the standard commentary of Baidhawi Says on the first passage : 'Whosoever turns back from his belief (*irtada*), [*sic*] openly or secretly, take him and kill him wherever ye find him, like any other infidel. *Separate yourself from him altogether. Do not accept intercession in his regard.*'<sup>787</sup>

[Italics from original text]

As can be seen here, both Samuel Zwemer and Majid Khadduri make very similar, if not verbatim, comments on verse 4:90. It could be argued that Khadduri has not provided any serious *tafsir* to support this interpretation and analysis of the verse, and this becomes

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<sup>785</sup> Khadduri, Majid, 1955, *War and Peace in the Law of Islam*, The Johns Hopkins Press, Baltimore, USA, p150

<sup>786</sup> Khadduri, Majid, *ibid.*, p150. Also see O'Sullivan, Declan, 'The Interpretation of Qur'anic Text to Promote or Negate the Death Penalty for Apostates and Blasphemers,' *op.cit.*, p72

<sup>787</sup> Samuel M. Zwemer, *The Law of Apostasy in Islam*, *op.cit.*, p37. Zwemer does not provide either Baidhawi's full name, or the source he is quoting him from. See the quote below from Khadduri, on verse Samuel Zwemer, concerning Baidhawi's comment on verse 5:54. It is almost verbatim what cites here. Also see O'Sullivan, Declan, *ibid.*, p72

a fairly clear comment to make, when in reference to his work in this context. Another factor here is that the verses he quotes in translation were written in a very similar fashion to the translation as those that presented by Zwemer. Clearly, the conclusions of both authors, and the *tafsir* of these verses are identical in the verses' meaning. Also, in assessing the footnotes used in Khadduri's work, published in 1955, there are citations and quotes taken directly from Samuel Zwemer's work, which was first published in 1924. Therefore, as they both provide the English translation in a very similar form, and above here their quotes are almost in verbatim, it can be argued that Khadduri has, perhaps, not looked any further, or any deeper, into the literature covering the legal sentencing on apostasy, much further than limited sources that Zwemer, the Christian Missionary, minister would have used. As explained above in the 'Introduction,' Zwemer promoted his conclusion, and declared that he had a specific 'agenda' which proved which side of the 'fence' he sat on, so he had no reason for looking further into the topic, rather than just glancing over the surface that covers it.

The very point, concerning criticism against both authors Zwemer and Khadduri, can be easily explained further, together with the reasons *why* this statement has been raised.

As S. A. Rahman, the retired Chief Justice of *Shari'a* law in Pakistan indicates, the interpretation of the verses 4:89-92 can quite easily be misunderstood, which will lead to an incorrect conclusion about the message of the Qur'an, a wrong interpretation of Islamic law, and a misinterpretation of the message propagated by the Prophet Muhammad. S. A. Rahman identifies the sort of 'interpreters,' such as Samuel Zwemer, who tend to adopt the negative view, without having engaged in further analysis to confirm whether the specific *tafsir* could be genuine and unalterable. For example, on reading 4:89-92, S. A. Rahman states:

It is plain that even these verses do not permit aggression against hypocrites. If they are peaceful, no action can be taken against them. It is only if they adopt open hostility that they are to be engaged in combat and killed. Only an unfair critic, like Dr. Zwemer, could have suggested, as he does, by quoting only a part of the verse that they furnish



proof of lack of toleration and absence of personal liberty in Muslim law. Apparently, Majid Khadduri sees in this verse authority for the death penalty in a case of apostasy – an impossible position in the whole context.<sup>788</sup>

With a further explanation, S. A. Rahman identifies the potential source of how the genuinely misconstrued interpretation by Islamic jurists and theologians - that the perpetrator of the simple act of apostasy, on its own - will receive the death penalty, could have been derived from. He highlights the historical context of how such confusion and certain levels of ambiguity could have developed. As he clarifies :

In the early years of Islam, the fact that persons who defected from the religion also joined the enemy groups, may have obscured the distinction between peaceful renegades and apostates who actively opposed the faithful. Chalpi, in his comments on *Fath al-Qadir*, cites Ibn al-Hamman's opinion that 'there is no punishment for the act of apostasy, for its punishment is greater than that, with God.' *This is an extremely significant comment, in harmony with the letter of the Qur'anic text.*<sup>789</sup>

[Italics added in for emphasis]

Samuel Zwemer uses *al-Khazan* as the primary source for defending his hypothesis that the death penalty for apostasy is stated as the unquestionable 'norm' within *shari'a* law. Zwemer uses this source as it quotes from several of the founders of the four Islamic *maddhab* which, he defends, presents this sentence as having a legitimate, valid status from the interpretation of Qur'anic message. As Zwemer proclaims :

The famous commentary of Al Khazan (used most extensively in the Mohammedan University called Al Azhar), quotes from Malik ibn Anas, Ahmad ibn Hanbal and others, and gives this interpretation of the verse: "All the deeds of the apostate become null and void in this world and the next. *He must be killed.* His wife must be separated from him and he has no claims on any inheritance" (page 155, vol.i, Cairo edition). Ath Tha'alibi (788A.H.), in his commentary on Sura II, verse 214, leave no doubt that the

<sup>788</sup> Rahman, S.A., *Punishment of Apostasy in Islam*, op.cit., p51-52. Also see O'Sullivan, Declan, *ibid.*, p73

<sup>789</sup> Rahman, S.A., *ibid*, p45. Also see O'Sullivan, Declan, *ibid.*, p73

verse in question, whatever the grammatical construction may be, demands the death of the apostate.<sup>790</sup>

A very important point is then made by S.A. Rahman, in his rather balanced critique while assessing the work by Samuel Zwemer. In reference to Zwemer's interpretations and conclusions of the verses' meaning, connected to another verse in *Al-Baqarah*, the second Surah, S.A. Rahman indicates that :

Dr. Samuel M. Zewmer's [*sic*] conjecture that commentators derive justification for the death penalty from this verses read with verse 218, *al-Baqarah*, is fanciful. The mere fact that in the *Tafsir Khazan*, the various disabilities (including the death sentence) to which an apostate is subject, according to the orthodox view, are categorised under verse 218 of *al-Baqarah*, cannot support this view, as Dr. Zwemer seems to imagine.<sup>791</sup>

Those who are eligible for the full consideration of the *Shari'a* punishment for apostasy, have to be categorised specifically as : "The accused must be adult, sane, married, a Muslim, a freeman et cetera."<sup>792</sup> Dealing with apostasy, the individual must be an adult, as children cannot be legally accepted as apostates. Also, the accused must be in a 'state of sanity,' as those perceived to be 'mentally insecure' do not qualify as legally valid for the conviction of apostasy. The deviation should be voluntary from the accused apostate, thus under freewill and free choice, as opposed to being elicited by any enforcement or compulsion. This point is raised in the Qur'an itself, in Surah *Al-Nahl*, 16:106, which suggests the removal of any guilt or punishment to those who are coerced to apostatise:

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<sup>790</sup> Zwemer, Samuel M., *The Law of Apostasy in Islam*, op.cit., p34. Also see O'Sullivan, Declan, ibid., p73-74

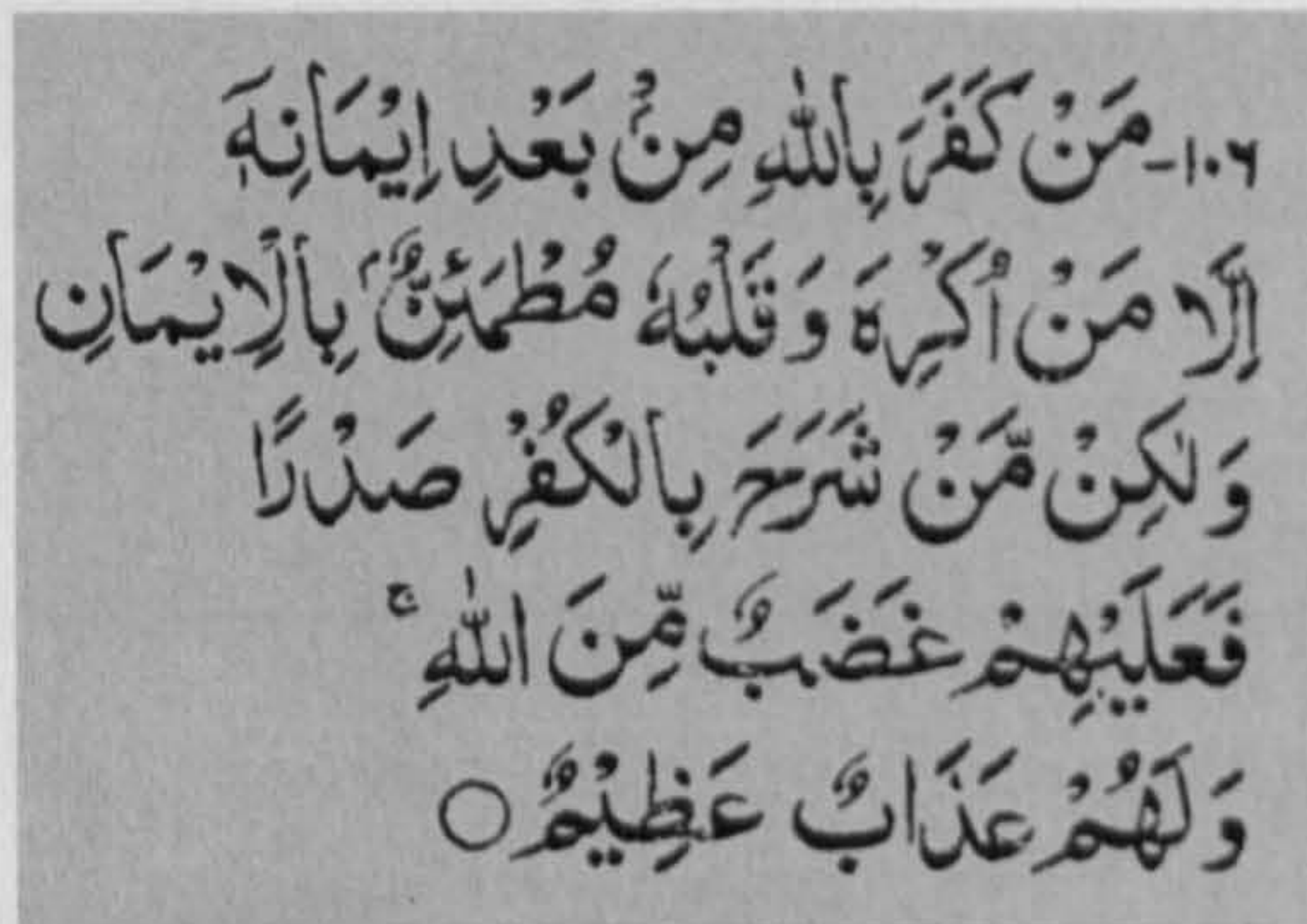
<sup>791</sup> Rahman, S.A., *Punishment of Apostasy in Islam*, Ibid., p46-47. Also see O'Sullivan, Declan, ibid., p74

<sup>792</sup> Haroon, Muhammad, 1993, *Islam and Punishment*, Vision Islamic Publications, Lahore, Pakistan, p29.

Also see O'Sullivan, Declan, '*Al-Hudud : الحدود* : Definition of Crimes and Punishments stated within the Qur'an and Sunna, op.cit, p41-72.



### Surah Al-Nahl, 16:106



Whoso disbelieves in Allah after he has believed, except the case of one who is forced to make a declaration of disbelief while his rest rests securely in faith, but one who opens his mind to disbelief, on him is Allah's wrath and he shall have a grievous punishment. (16:106)<sup>793</sup>

Tahir-ul-Qadri explains that this Qur'anic verse excludes the death penalty when such pressure forces someone to become an apostate and he suggests that it was revealed after the experience of 'Ammar bin Yasir, who was coerced to pronounce his disbelief, denying the existence of God.<sup>794</sup> In reference to the former verse, which he cites as *Al-Nahl*, 16:107, S.A. Rahman translates it as :

Whoso disbelieves in Allah after he has believed – save him who is forced thereto and whose heart is still content with faith – but such as open their breasts to disbelief: on them is wrath from Allah. Theirs will be an awful doom. (*Al-Nahl*, 107)<sup>795</sup>

S.A. Rahman argues here, that any neutral observation when interpreting the meaning of this verse, will discover that “The only punishment mentioned for apostasy in this verse is

<sup>793</sup> Arabic script from from Ali, Abdullah Yusuf, Vol.2,p.685, and the translation is from Tahir-ul-Qadri, Muhammad, *Islamic Penal System and Philosophy*, op. cit. p388, Qur'an 16:106

<sup>794</sup> Tahir-ul-Qadri, op.cit., p389. Abdullah Yusuf Ali, also cites this *hadith*, which states the manner in which 'Ammar was tortured to the extent he had to apostatise against, his own personal inner wishes and inner faith : “ ‘Ammar, whose father Yasir, and mother Sumayya, were subjected to unspeakable tortures for their belief in Islam, but never recanted. 'Ammar himself was of a less mature age and faith, and in a weak moment, suffering under tortures himself and his mind acted on by the sufferings of his parents, uttered a word construed as recantation, though his heart never wavered and he came back once again to the Prophet, who consoled him for his pain and confirmed his faith. There is no permission in this for weakness or dissembling under torture or persecution,” Abdullah Yusuf Ali, Vol.2, in footnote 2145 on p685,

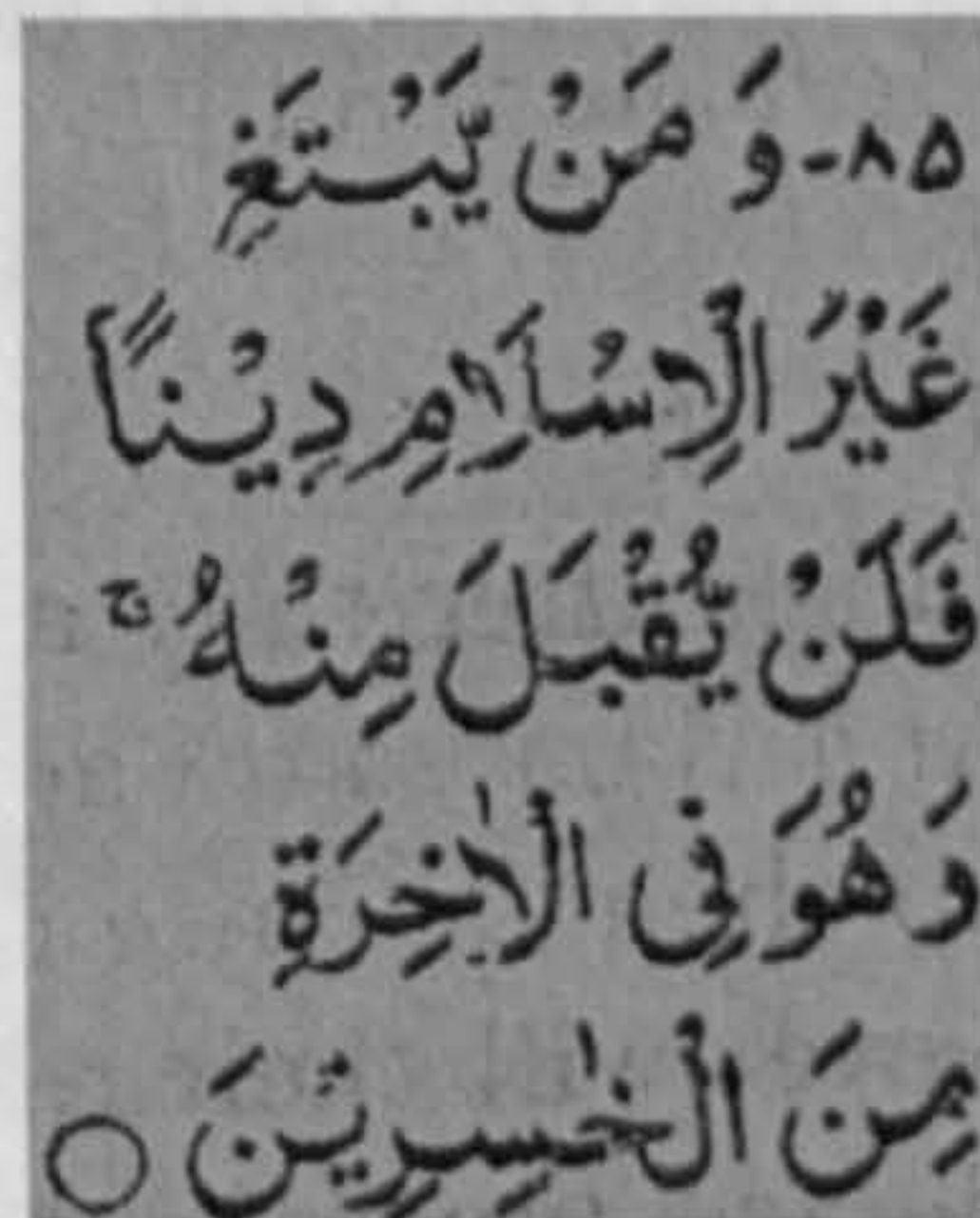
<sup>795</sup> Rahman, S.A., *Ibid.*, p46



postponed to the Hereafter.”<sup>796</sup> Also, Al-Samara'i reiterates this point, and cites the opinion presented by al-Qurtubi in his work *al-Jami'*, where al-Qurtubi declares that “the verse conveys an admonition that the wrath of Allah will be incurred by the apostate but there is no hint of any other punishment.”<sup>797</sup>

Mohamed Selim El-Awa states that from the Qur'anic verse 16:106, which was revealed during the late Meccan period, “it is clear from the words that the apostate is threatened only with punishment in the next life.”<sup>798</sup>

He argues that further to this verse, another Qur'anic message compels the consequences of any ‘voluntary’ apostasy, i.e. the death penalty, with :



Whoso seeks a religion other than Islam,  
it shall not be accepted from him. (3: 85)<sup>799</sup>

Tahir-ul-Qadri indicates that here the word “seeks” refers to voluntary deviation from Islam, exempting any coerced action to lead to apostasy. However Abdullah Yusuf Ali presents the opposing view, that this verse manifests the genuine Islamic perspective on those who seek to follow another religion:

The Muslim position is clear. The Muslim does not claim to have a religion peculiar to himself. Islam is not a sect or an ethnic religion. In its view all Religion is one, for the Truth is one. It was the religion Preached by all the other prophets. It was the truth taught by all the inspired Books. In essence, it amounts to consciousness of the Will and Plan of God and a joyful submission to that Will and Plan.

<sup>796</sup> Rahman, S.A., Ibid., p46

<sup>797</sup> Ibid., p46-47

<sup>798</sup> El-Awa, Mohamed Selim., op.cit., p50

<sup>799</sup> Tahir-ul-Qadri, ibid., p389, Qur'an 3: 85



If anyone wants a religion other than that, he is false to his own nature, as he is false to the God's Will and Plan. Such a one cannot expect guidance, for he has deliberately renounced guidance.<sup>800</sup>

In reference to 'all the inspired Books' here, he is clearly indicating the revealed scripture, i.e. the Qur'an in Islam, the Bible in Christianity and the Torah in Judaism, hence the *Ahl al-Kitab* – The People of the Book.<sup>801</sup>

Ibn 'Abbas suggests that this verse was revealed in reference to Abdullah Ibn Abi al-Sarh. The verse asserts that whoever reverts to *kufr* after believing in God, will receive Allah's Anger and will suffer severe punishment in this world because they left their faith for *kufr*. The verse concludes that God will not guide those who do not deserve his guidance, if they choose to reject *Iman* (faith) in Him.<sup>802</sup>

Ibn Kathir argues that this verse highlights the point that anyone who decides to apostatise from Islam will receive the wrath of God. The verse also points out that God will be aware of those who deliberately chose to become apostates, and will not punish His wrath on to those who are forced into disbelief. Ibn Kathir also mentions that verse indicates that this verse is Allah's message that He will deliver His utter anger to those who willingly disbelieve in Him, after they had clearly accepted and believed in Him. The verse concludes in that those who disbelieve will suffer severe punishment in the Hereafter, because they preferred this life to what will become them in the Hereafter. In their having left faith, only for the sake of this world only, Allah will not guide their hearts or help them to stand firm in the 'true religion'. The loss is theirs, and they will meet with Allah's punishment on Judgement Day.<sup>803</sup>

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<sup>800</sup> Ali, Abdullah Yusuf, *The Holy Qur'an*, op.cit., Vol 1, in footnote 418 on p145

<sup>801</sup> See O'Sullivan, Declan, 'In Defence of Islam - and the Western Misinterpretation of What is Perceived to be 'Islamic Fundamentalism' in *Le Courrier Du Geri – Recherches D'Islamologie et de Theologie Musulmane*, GERI (Groupe d'Etudes et de Recherches Islamologiques) in l'Université Marc Bloch de Strasbourg, France, Vol. 2, No. 3, *Automne* 1999, p164

<sup>802</sup> Ibn 'Abbas, '*Tanwir al-Miqbas min tafsir Ibn 'Abbas*,' op.cit., p293

<sup>803</sup> Ibn Kathir also mentions here the story of *Mu'az Ibn Jabal* and the Jew who converted to Islam and later revert. Ibn Kathir, '*Tafsir al-Quran al-'azeem*,' op.cit., Vol. 2, p540

As neither of these classical commentators suggest that the 'punishment' will be delivered in this life, but that it will only be in the Hereafter, so this is another illustration that no comments of the verse's interpretation can defend, or support, the death penalty in this life for the apostasy from Islam.

Muhammad Hamidullah in his work *The Muslim Conduct of State*, argues that :

To wage war against apostates is justified on the same principle as that on which the punishment of a solitary apostate is based. The basis of Muslim polity being religious and not ethnological or linguistic, it is not difficult to appreciate the reason for penalizing this act of apostasy. For it constitutes a political-religious rebellion.<sup>804</sup>

He defines apostasy in Muslim law as an act of "turning away from Islam after being a Muslim. Not only does it occur when a person declares his conversion to some non-Islamic religion, but also when he refuses to believe in any and every article of the Islamic faith."<sup>805</sup> He raises the position of the relevant punishment for this act, by emphatically assessing the legal corollary deriving from a broad background of evidential defence, which includes :

The sayings and the doings of the Prophet, the decision and the practice of the Caliph Abu Bakr, the consensus of the opinion of the Companions of the Prophet and all the later Muslim jurisconsults, and even certain indirect verses of the Qur'an<sup>806</sup> all prescribe capital punishment for an apostate.<sup>807</sup>

He cites these verses 'certain indirect verses' as being 37:57 and 5:54. This is of some interest, as the verse 5:54 has been covered above, as being a verse that is often quoted by both sides, but the present research has not found anywhere the relevance of the verse 37:57 in the context of apostasy, or for it to be mentioned on any of the relevant literature discussing this topic. The verse 37:57 reads as:

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<sup>804</sup> Hamidullah, Muhammad, *Muslim Conduct of State*, 1953 (3<sup>rd</sup> Revised edition), Sh. Muhammad Ashraf, Lahore, Pakistan, p171

<sup>805</sup> Hamidullah, Muhammad, *Ibid.*, p171

<sup>806</sup> He cites the verses 37:57 and 5:54

<sup>807</sup> Hamidullah, Muhammad, *op. cit.*, p171



For had it not been for my Sustainer's favour, I would surely be (now) among those who are given over (to suffer).<sup>808</sup>

There are also no verses surrounding this verse, that relate to the punishments for disbelievers, or renegades, apart from 37:63 that reads as "Verily, We have caused it to be a trial for evil doers"<sup>809</sup> but commentators on this verse, argue that it relates to the concept of the afterlife being Heaven or Hell, depending on how a person lead their life here. Hamidullah then continues to describe that there is no distinction between a Muslim who was born of Muslim parents and that of someone who converted into Islam. There is also no difference for a Muslim to convert to the *ahl al-kitab* (Judaism and Christianity), atheism, pagan idol worship, or any another non-religious faith system.

In terms of the apostates repentance time-scale, he states that it is essential that the apostate needs the issue of their conversion to be discussed, in an effort to remove any doubts of the Islamic faith that may have arisen. This time-scale does not necessarily rely on the three-day allowance, but may even last for several months.<sup>810</sup> Hamidullah lists the specific conditions that the apostate must be within, to be legitimately legally accused for such an act. Such exclusion includes cases of a person deemed to be insane, delirious, melancholy or perplexed. Also a minor, or one who is intoxicated, or someone who had declared their faith in Islam under coercion or a person whose faith in Islam had not been known or established; if these "were to become apostate they would not suffer the supreme penalty."<sup>811</sup> As mentioned in Chapter One, according to the Shafi'i school of law, "This favour, however, does not, according to our school, extend to the case of drunkenness. Apostasy, and a declaration of having returned from one's errors, pronounced by a drunken person, have the ordinary legal consequences."<sup>812</sup> Therefore,

<sup>808</sup> Asad, Muhammad, op.cit., p685

<sup>809</sup> Asad, Muhammad, Ibid., p686. Abdullah Yusuf Ali cites it as 37:63 as "For we have truly made it (as) a trial for the wrong doers," and cites the 'trial' to refer to "This dreadful bitter Tree of Hell is truly for the wrong-doers," Ali, Abdullah Yusuf, op.cit, Vol.3, p1199 and in footnote 4073 on p1199

<sup>810</sup> Hamidullah, Muhammad, Ibid., p172. The issue of time-allowance for repentance is discussed in full detail below.

<sup>811</sup> Hamidullah, Muhammad, Ibid., p172

<sup>812</sup> En-Nawawi, op.cit., p436

here is another example where there is a lack of any true consensus and consistency of the rules held within the different *Shari'ah* schools of law.

Added to this list, Hamidullah cites the Hanafi *madhhab*, which includes women and hermaphrodites to not be condemned to the death penalty. These two categories would be incarcerated and “even physically tortured” but also aged old man would also be exempt from the death penalty. Concisely, concerning the treatment of an apostate, he clearly emphasises that

The apostate has to choose between Islam and the sword; he cannot be given quarter (امان) nor will he be allowed to become a *dhimmiy* [sic] (i.e. a resident non-Muslim subject of the Muslim State on payment of the yearly protection tax). *De jure* he is dead.<sup>813</sup>

Therefore, if an individual does not re-embrace Islam but manages to leave the *Dar al-Islam*, the property he leaves behind would be distributed among the Muslim heirs, as it would if the apostate (*murtadd*) had physically died.

### **3.2.1 The Definition of *dhimmi*.**

This last point presented by Muhammad Hamidullah raises a particularly interesting factor, as the very definition of a *dhimmi* within the Islamic community differs, and includes many separate groups of believers. Mohammad Hashim Kamali, defines them as:

*Dhimmi* : Free non-Muslim subjects living in Muslim lands, who, in return for capital tax (*jizya*) payment, enjoy protection and safety.<sup>814</sup>

However, on a more broader level of understanding, Majid Khadduri offers a fascinating definition of *dhimmi*. He quotes Ya'qub ibn Ibrahim al-Ansari Abu Yusuf from his work *Kitab al-Kharaj*. The tolerated communities within Islam included not only the so-called *ahl al-kitab* (people of the Book i.e. believers of Christianity and Judaism), also known as the Scripturaries, but also acceptable were the idolaters ( '*abadat al-asnam* ) and fire

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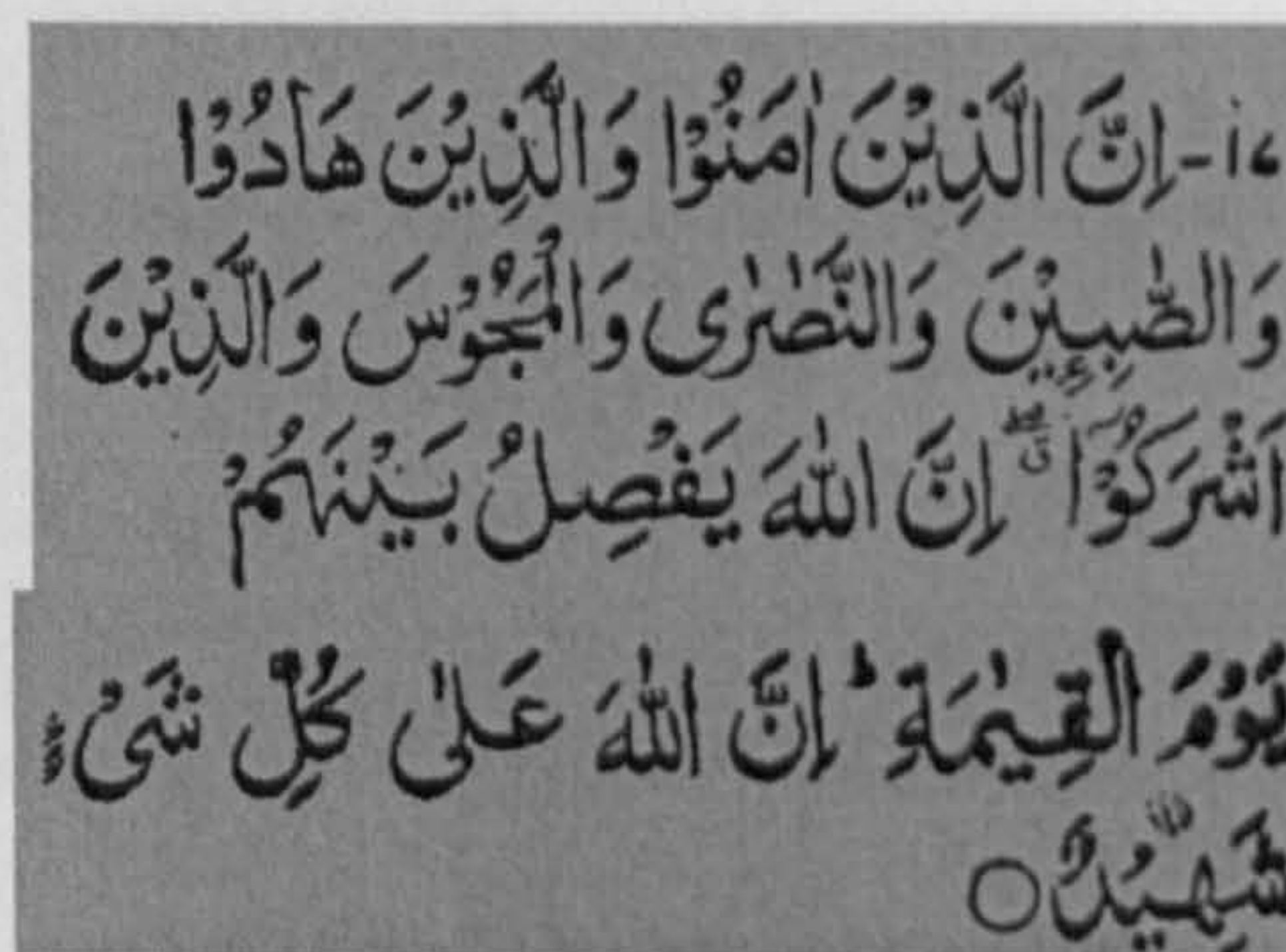
<sup>813</sup> Hamidullah, Muhammad, Ibid., p172 and p173. The issue of the sentencing on women convicted on apostasy is also discussed in detail below.



worshippers, provided that they have accepted the rules of residence in any Muslim territory, except the Arabian Peninsula. The *ahl al-kitab* (people of the Book) or Scripturaries, include Christians, Jews, but also the Magians (Zoroastrians), Samaritans and Sabians. Having stated this, although the idolaters ( *'abadat al-asnam* ) and fire worshippers, were included within the Islamic community under specific conditions, Khadduri also mentions that the Polytheists (*mushrikun*) were, as a rule, denied access to the status of *dhimmi*, particularly within Arabian Peninsula because there, 'they had to chose between Islam and the sword.'<sup>815</sup>

### **Surah Al-Hajj, 22:17**

The acceptance shown in these definitions of *dhimmi*, and the various groups within that, is also related to in verse 22:17 in the Qur'an. This verses states that :



Those who believe (in the Qur'an), those who follow the Jewish (scriptures), and the Sabians, Christians, Magians, and Polytheists – Allah will judge between them on the Day of Judgement : For Allah is witness of all things.<sup>816</sup>

Abdullah Yusuf Ali, argues that in verses 2:62 and 5:69<sup>817</sup>, that "in both those passages the Muslims are mentioned with the Jews, Christians, and Sabians, as receiving God's protection and mercy."<sup>818</sup> He also indicates that in verses 22:17 :

Here, besides the four religions, there is further mention of Magians and Polytheists; it is not said that they would receive God's Mercy, but only that God will judge between

<sup>814</sup> Kamali, Mohammad Hashim, op.cit., p235, p317

<sup>815</sup> Khadduri, Majid, 1955, *War and Peace in the Law of Islam*, op.cit., p176. Khadduri also cites Abu Yusuf, Ya'qub ibn Ibrahim al-Ansari, *Kitab al-Kharaj*, Cairo, A.H. 1352, p128-129

<sup>816</sup> Arabic script and translation is from Ali, Abdullah Yusuf, *The Holy Qur'an*, op.cit., Vol 2, p854-855

<sup>817</sup> Abdullah Yusuf Ali cites verse 5:69 as 5: 72, but it appears as 5:69 in most other copies of the Qur'an

<sup>818</sup> Ali, Abdullah Yusuf, Ibid., Vol 2, in footnote 2788 on p854



the various forms of belief. The addition of the Polytheists – those who join gods with God – may seem a little surprising. But the argument is that all forms of faith that are sincere (and not merely contumacious) are matters in which we as men cannot interfere. Our duty is to be tolerant within all the limits of tolerance – i.e., so long as there is no oppression, injustice, and persecution. Where we can right an obvious wrong, it is our duty to do so; but it would be wrong on our part to rush in without power or authority *simply because other people do not see our point of view.*<sup>819</sup>

[Italics added for emphasis]

Now, a very important verse to address while assessing the manner in which the Qur'an treats those who believe and then choose to disbelieve – and then repeatedly change their mind back into belief and then again choose disbelief, the next verse in Surah An-Nisa', 4:137 seems rather self-explanatory.

#### **Surah An-Nisa', 4:137**

Another very relevant verse, dealing with the treatment towards those who choose faith, then deny faith and repeatedly move in-between believing and disbelieving, is stated rather clearly in the Qur'an, in Surah Al-Nisa, 4, verse 137 :

١٣٧- إِنَّ الَّذِينَ آمَنُوا ثُمَّ كَفَرُوا  
ثُمَّ آمَنُوا ثُمَّ كَفَرُوا  
ثُمَّ أَزْدَادُوا كُفْرًا  
لَمْ يَكُنِ اللَّهُ لِيَغْفِرَ لَهُمْ  
وَلَا يَهْدِيَهُمْ سَبِيلًا ۝

Those who believe, then reject Faith, then believe (again) and (again) reject Faith, and go on increasing in Unbelief, - Allah will not forgive them nor guide them on the way.<sup>820</sup>

Shaikh Abdur Rahman argues in no uncertain terms, that :

<sup>819</sup> Ibid., in footnote 2788 on p854

<sup>820</sup> Surah Al-Nisa, 4, verse 137, both the Arabic script and the translation are from Ali, Abdullah Yusuf, Vol.1,p.224.



This is a striking pronouncement and almost conclusive against the thesis that an apostate must lose his head immediately after his defection from the faith. The verse visualises repeated apostasies and reversions to the faith, without mention of any punishment for any of these defections on this earth. The act of apostasy must, therefore, be a sin and not a crime. If he had to be killed of his very first defection, he could not possibly have a history of conversions.<sup>821</sup>

This interpretation has also been upheld by Maulana Abu'l-Wafa Thana' Ullah from Amritsar, who is a well respected scholar amongst the *ahl-i-Hadith* (The People of the *Hadith*), whose work includes *Islam aur Masihiyyat*.<sup>822</sup> Muhammad Zafrullah Khan comments on 4:137 by stating that this verse proclaims that every person is given the choice to accept Islam on their own will and that every possible way of entering the faith is accessible to all. His further comments announce that :

It has also been proclaimed that it is possible for everyone to depart from Islam by any of the doors that provide entry into Islam and to proclaim his disbelief and his apostasy. Thus as the doors of entry into the circle of Islam are open to everyone, the doors of egress from Islam are also open.<sup>823</sup>

For a person to depart from their faith and leave Islam, Khan raises the question of whether the teachings of Islam allow those found guilty to be able to offer any repentance (*istitabah*) and return to the faith. He argues that this verse (4:137) establishes that if a person has sincerely believed in Islam and then announces that they have left the fold of the faithful, and also admit that they deny God and the Prophet Mohammad, but God still offers them an opportunity to return to hold a legitimate place within the Islamic community - which they undertake sincerely - then there is nothing to prevent this from occurring. The doors of entry into Islam are as equally open to these people, as they were

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<sup>821</sup> Rahman, Shaikh Abdur, *Punishment of Apostasy in Islam*, op.cit, p.39.

<sup>822</sup> Ullah, Maulana Abu'l-Wafa Thana', *Islam aur Masihiyyat*, Amritsar, Din Muhammadi Press, Lahore, 1960, p.202-204, as cited by Rahman, Shaikh Abdur, *Punishment of Apostasy in Islam*, op.cit, in footnote 47, on p.39. [Please note that in the text on the page, the footnote is numbered as 74, but in the footnote, at the bottom of the page, it is numbered as 47, so there must have been some unfortunate page setting format problem, that replaced the number's position in reverse.]

<sup>823</sup> Khan, Muhammad Zafrullah, *Punishment of Apostasy in Islam*, no date given, London Mosque,



open the first time, when they became a Muslim. If, after this return to Islam, the same person again denies God and the Prophet Mohammad, this is also an acceptable act. The person :

is free to do so a second time, and is not subject to any restriction, for there is no compulsion; there is freedom of conscience and freedom of belief. If he disbelieves again and goes on advancing in disbelief and does not repent, Allah would not forgive such a one, nor would guide him to any way of deliverance. He would achieve no spiritual success.<sup>824</sup>

Also commenting on this verse, Syed Barakat Ahmad argues that the death penalty after the first time a person is proven guilty of apostasy cannot be defended, due to the meaning of this Qur'anic verse. He perceives that, clearly, "A recanter cannot enjoy the repeated luxury of believing and disbelieving if the recantation is punished by death. A dead man has no further opportunity to 'again believe and disbelieve.' "<sup>825</sup>

Reiterating this point, Mohammad Hashim Kamali argues that this particular Qur'anic verse :

provides, once again, a strong argument against the death penalty for apostasy :

إِنَّ الَّذِينَ آمَنُوا ثُمَّ كَفَرُوا ثُمَّ آمَنُوا ثُمَّ كَفَرُوا ثُمَّ أَزْدَادُوا  
كُفْرًا لَمْ يَكُنِ اللَّهُ لِيَغْفِرْ لَهُمْ وَلَا لِيَهْدِيَهُمْ سَبِيلًا.

The implication is unmistakable. The text would hardly entertain the prospect of repeated belief and disbelief if death were to be the prescribed punishment for the initial act. It is also interesting to note that the initial reference to disbelief is followed by further confirmation of disbelief and then 'increase in disbelief.' One might be inclined to think that if the first instance of apostasy did not qualify for capital punishment, the repeated apostasy might have

England, p.8.

<sup>824</sup> Khan, Muhammad Zafrullah, *ibid.*, p.8-9.

<sup>825</sup> Ahmad, Syed Barakat, 'Conversion From Islam,' in *The Islamic World, From Classical to Modern Times – Essays in Honour of Bernard Lewis*, (Eds.) Clifford Edmond Bosworth, Charles Issawi, Roger Savory and A. L. Udovitch, 1989, The Darwin Press, Inc., Princeton, USA, p.7.



provoked it – had such a punishment even been intended in the Qur'an.<sup>826</sup>

Concerning 4:137, Ibn 'Abbas interprets the meaning of the verse to be in reference to those who believed in Moses, and then reverted back into disbelief. At a later date they then became believers in Uzayr, but then rejected that belief, on deciding to faithfully follow Jesus. Ibn 'Abbas suggests that the verse concludes by declaring that finally, these people eventually settled in the state of disbelief and, as such, due to their consistent belief, then disbelief, then belief again and again their final disbelief, then their repentance will not be accepted.<sup>827</sup>

Al-Baydawi offers another interpretation of the verse's meaning. He suggests that those who are mentioned in the verse are either the Jews, or some apostates who increased in their disbelief. The main theme of the verse is the proclamation that Allah will not forgive such people of constant disbelief. Al-Baydawi also suggests that the verse is inclined to suggest that it is rather unlikely that such disbelievers as this would ever offer any repentance, and it would be quite probable for them to remain in the state of disbelief.<sup>828</sup>

Al-Shawkani presents a similar interpretation of verse 4:137, as that which has been provided by Ibn 'Abbas. He argues that the verse makes reference to some Jews who had reverted to disbelief, after they had believed. He explains this view by suggesting that these Jews had believed in Moses, but then disbelieved in him, in their decision to follow Uzayr. They then disbelieved in Uzayr, by following the teachings of Jesus. The verse then indicates that they piled on their disbelief with further disbelief, by following and then denying the Prophethood of Muhammad.

Al-Shawkani also suggests a different interpretation of the actual meaning of 4:137.

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<sup>826</sup> Kamali, Mohammad Hashim, *Freedom of Expression in Islam*, 1997, Islamic Texts Society, Cambridge, UK, p97-98

<sup>827</sup> Ibn 'Abbas, '*Tanwir al-Miqbas min tafsir Ibn 'Abbas*,' op.cit., p108

<sup>828</sup> Baydawi, Abdallah Ibn Omer, '*Anwar al-Tanzil wa asrar al-ta'wil*,' Vol I., op.cit., p243

He speculates that it could also mean that the Jews believed in Moses, but then disbelieved by worshipping the calf.<sup>829</sup> They then moved from the calf to follow their belief in Moses, after he had returned from Mount Sina.<sup>830</sup> Again, they believed and disbelieved in Jesus, and increased the levels of disbelief upon disbelief by denying the message of the Prophet Muhammad. Al-Shawkani mentions a further suggestion on the 'correct' interpretation of 4:137, as it could be seen as a verse with a very general theme to it. It has been suggested that it simply describes an unnamed group of people who disbelieve after believing, and then pursue their disbelief after their disbelief.<sup>831</sup>

At-Tabari emphasises on a very similar commentary as presented by Ibn 'Abbas, Al-Baydawi and Al-Shawkani. He presents the mean of the verse to be in reference to those who believed in Moses, then disbelieved, then believed, and then again disbelieved, and who finally piled their unbelief-upon-unbelief by denying the Prophet Muhammad's mission. At-Tabari presents another opinion of the verse's meaning, as it has been argued that those mentioned in the text are the hypocrites (*al-mushriqun*).<sup>832</sup> This verse is said to have been used by 'Ali Ibn Abi Talib, who was the fourth Calipha after the Prophet. He is said to have strengthened his opinion with this verse, with his understanding of the verse to mean that it enables an apostate to be allowed three chances for the 'consideration period' in their search to reach repentance.<sup>833</sup>

Az-Zamakhshari's opinion on the meaning of verse 4:137, is that it portrays the view held on those who become renowned for their frequent and recurring acts of disbelief. In a similar opinion as expressed by Al-Baydawi, it is Az-Zamakhshari's view that the verse is argued to predict that such a people of consistent disbelief will never repent, and they will settle in the life of constant disbelief. It would also be unlikely – if not impossible – for them to achieve any understanding of what they could deserve, or receive, in Allah's Benevolence and Grace. The verse also declares that this conclusion is due to the fact that

<sup>829</sup> A reference to this is found in Q. 20: 88-91.

<sup>830</sup> Reference here is to Moses's return from the Mount Sina which is mentioned in Q. 20: 83.

<sup>831</sup> Al-Shawkani, , *Fath al-Qadir: al-Jami' bayn fanni al-Riwaya wa al-Diraya min 'ilm al-tafsir*, Vol. I, op.cit., p664

<sup>832</sup> Al-Tabari, *Jam'a al-Bayan 'an ta'wil ayat al-Quran*, Vol. 4, op.cit., p325-326

<sup>833</sup> Al-Tabari, *Jam'a al-Bayan 'an ta'wil ayat al-Quran*, Vol. 4, op.cit., p327

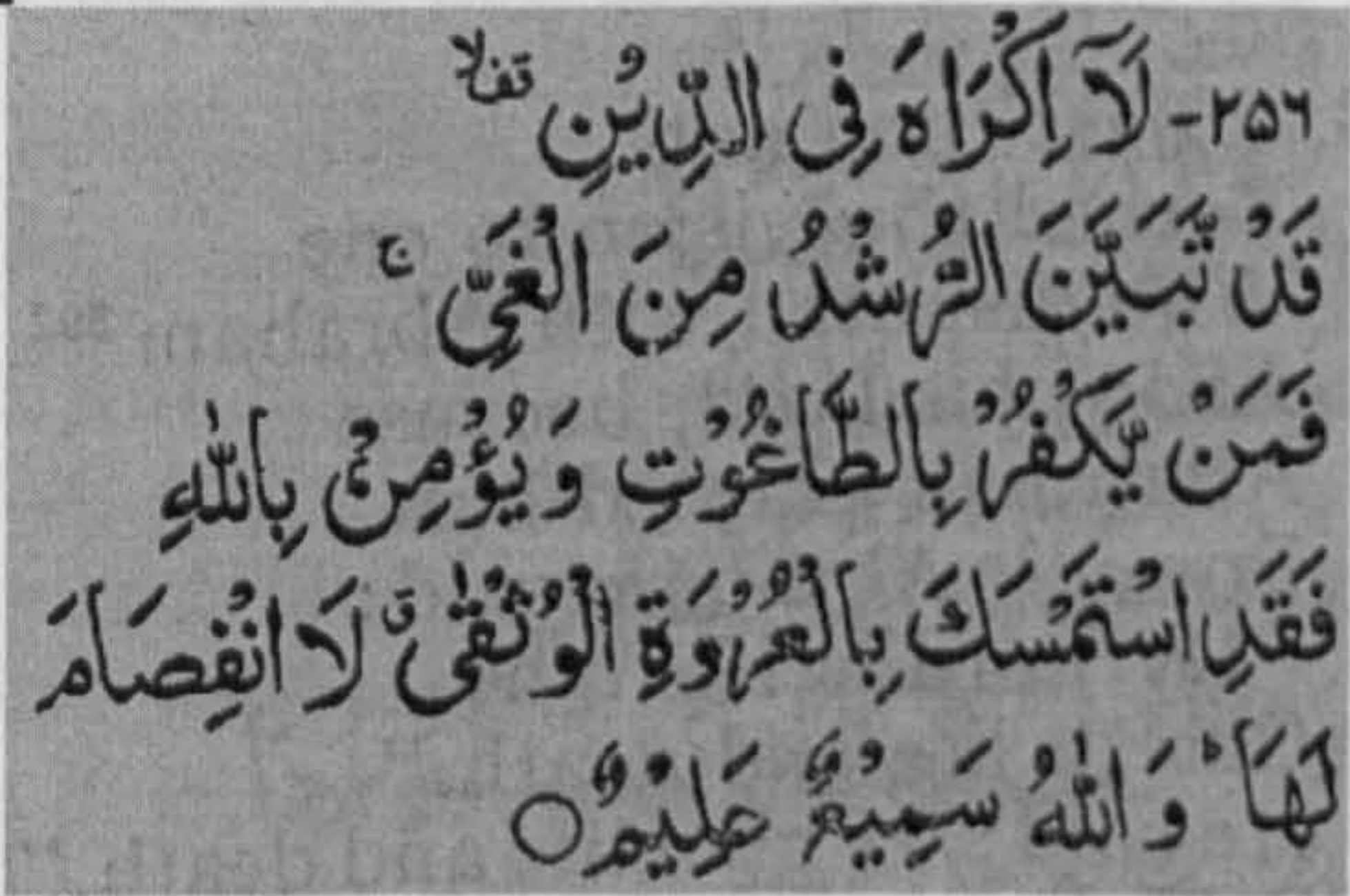


the hearts of such people are very much accustomed to general disbelief, as the norm. As was stated by several other exegetes, Az-Zamakhshari also suggests that the verse was revealed in reference to the Jews.<sup>834</sup>

Ibn Kathir argues that in verse 4:137 Allah clearly indicates that whoever will genuinely embrace faith, and then revert from it, but then embrace it again, and then decide to revert from it yet again, if they consistently remained in disbelief, and if that state of mind increased until the disbeliever's natural death, then they will never be provided with the chance to have their repentance accepted, should they produce one after their death. Ibn Kathir suggests that the verse concludes in stating that Allah will never forgive such a disbeliever of this kind, nor will He deliver them from their plight of disbelief in this life, because Allah refuses to point them towards the path of 'correct guidance' when there is clearly no commitment with such a person's unstable repetition of belief-disbelief-belief-disbelief.<sup>835</sup>

**3.3 Interpretations promoting freedom of belief.**

**Surah Al-Baqarah, 2:256**



There is no compulsion in religion :Truth stands out clear from Error: whoever rejects evil and believes in Allah hath grasped the most trustworthy hand-hold, that never breaks. And Allah heareth and knoweth all things.<sup>836</sup>

El-Awa also argues that the death penalty for apostasy, particularly when it is perceived to be within the *hadd* punishments, such a penalty contradicts the Qur'anic principle

<sup>834</sup> Al-Zamakhshari, *al-Kashshaf*, op.cit., Vol. I, p576-577  
<sup>835</sup> Ibn Kathir, '*Tafsir al-Quran al-'azeem*,' op.cit., Vol. I, p504  
<sup>836</sup> Arabic script and the translation from Ali, Abdullah Yusuf, *The Holy Qur'an*, op.cit., Vol. 1, p103



٢٥٦- لَا إِكْرَاهَ فِي الدِّينِ قَوْلًا

stated within *Al-Baqarah*, (sura 2) in ayah 256 which states 'There is no compulsion in religion.'<sup>837</sup> 'Ali Muhammad Ibn Hazm, in his work *Al-Muhulla*, avoids this argument due to his claim that the ayah 256 was abrogated and such compulsion is acceptable with religion. Ibn Hazm furthers his defence by claiming that the punishment for apostasy does not contradict the message of the Qur'an.<sup>838</sup> El-Awa argues that this position is invalid, as Qur'anic scholars have competently listed the abrogated verses of the Qur'an – and 2:256 is not amongst them.<sup>839</sup> He highlights another source defending this interesting point, which is the corollary put forward by *The Encyclopaedia of Islam*, under their section entitled *murtadd*, (مرتد) which summarises the information given as "In the Kur'an (sic) the apostate is threatened with punishment in the next world only."<sup>840</sup> Mohammad 'Ali suggests, concerning 5:54 that, therefore, within the Qur'an there is no mention of the punishment of a death sentence for apostasy :

as well as that *magna carta* of religious freedom, the 256th verse of the second chapter: لَا إِكْرَاهَ فِي الدِّينِ – *la ikraha fi-l-din* (there is no compulsion in religion).<sup>841</sup>

Muhammad Asad defines the term *din* used here, with its relevant meanings in use throughout the Qur'an, in further verses. He suggests that :

The term *din* denotes both the contents of and the compliance with a morally binding law; consequently it signifies 'religion' in the widest sense of this term, extending over all that pertains to its doctrinal contents and their practical implications, as well as to man's attitudes towards the object of his worship, thus compromising also the concept of 'faith.' The rendering of *din* as 'religion,' 'faith,' 'religious law' or 'moral law,' depends on the context in which this term is used. On the strength of the above categorical prohibition of coercion (*ikrah*) in

<sup>837</sup> El-Awa, op.cit, p51

<sup>838</sup> El-Awa, ibid., p51 and p66, see footnote 50, El-Awa also cited Ibn Hazm, 'Ali Muhammad *Al-Muhulla*, Beirut, no date given, Vol. XI, p195

<sup>839</sup> El-Awa, ibid., p51 and p66, see footnote 51, El-Awa also cited Suyuti, Jalal al-Din 'Abd al-Rahman, *Al-Iqtan fi 'Ulum al-Qur'an*, Cairo, 1951, Vol. II, p22-24

<sup>840</sup> 'Ali, Maulana Mohammad, *The Religion of Islam*, op.cit., p592. Also see El-Awa, ibid., p51 and in footnote 52 on p66. Both El-Awa and 'Ali, Maulana Mohammad cite Heffening's article entitled 'murtadd', in *The Encyclopaedia of Islam*, Vol. III, p736

<sup>841</sup> 'Ali, Mohammad, *The Religion of Islam*, Ibid., p594, Qur'an 2:256



anything that pertains to faith or religion, all Islamic jurists (*fuqaha'*), without any exception, hold that forcible conversion is under all circumstances null and void, and that any attempt at coercing a non-believer to accept the faith of Islam is a grievous sin: a verdict which disposes of the widespread fallacy that Islam places before the unbelievers the alternative of "conversion or the sword."<sup>842</sup>

As Mahmoud Ayoub suggests, there are certain conditions that obviously relate to the use of this verse. For example, :

The freedom to willfully accept or reject faith after the truth has become known, implies religious freedom and personal responsibility. This principle is unequivocally enunciated in the strict command : 'Let there be no coercion in religion (Q.2:256).' But religious freedom does not mean irresponsible religious anarchy. Rather, freedom is conditioned by knowledge of the truth. The verse just cited continues, 'for right-guidance has become clearly distinguished from manifest error.' Moreover, the consequences of this proviso are elaborated in the concluding statement of the verse: 'Thus he who rejects faith in idols (or Satan<sup>843</sup>) and has faith in God shall take hold of the firm handle which shall never be broken, for God is All-Hearing, All-Knowing'<sup>844</sup>

### **3.3.1 The Surah in the Qur'an entitled : *Kafirun* (Those who Reject Faith)**

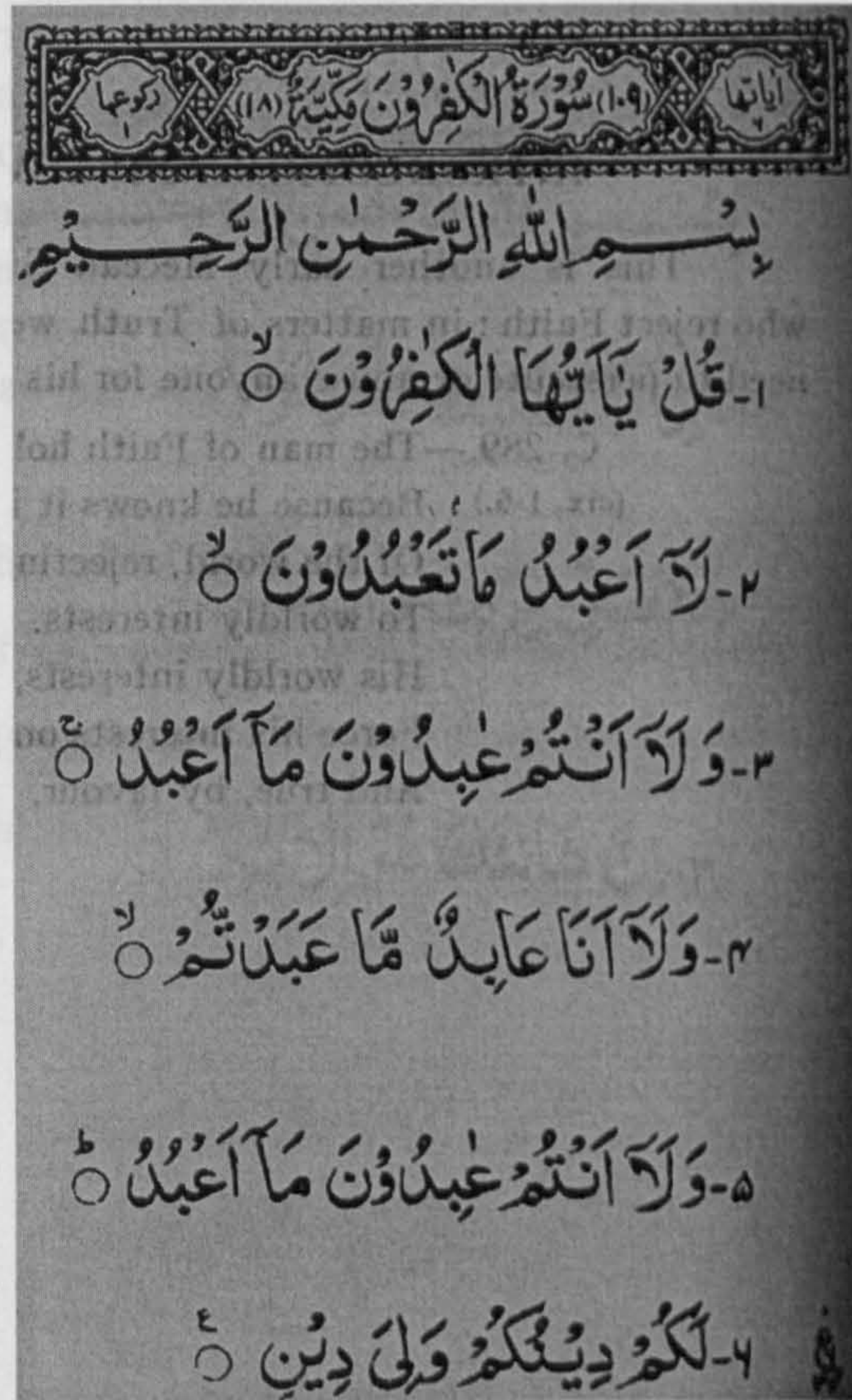
There is even a specific surah in the Qur'an, entitled *Kafirun* (Those who Reject Faith), which refers to who people who refuse to believe in God, that is there problem not the genuine believers of Islam – submission to God. This section of the Qur'an actively promotes mutual respect for the others and what ever they believe in that Muslims will be willing to agree to disagree on that point. Mutual respect is the positive, progressive message that this surah propagates. It was useful in the life time of the Prophet Muhammad, and could not be any more appropriate in such a cosmopolitan, multi-cultural world that so overtly exists today :

<sup>842</sup> Ali, Muhammad, *The Message of the Qur'an*, op.cit, in footnote 249 on p57-58

<sup>843</sup> Satan is used here because, as Mahmoud Ayoub argues, "The word *taghut* implies arrogance and transgression, which are the two distinguishing characteristics of Satan. *Taghut* has also been taken to signify idols whose worship necessarily leads to arrogance and transgression," Ayoub, Mahmoud, 'Religious Freedom and the Law of Apostasy in Islam', op.cit., p77

<sup>844</sup> Ayoub, Mahmoud, Ibid.,, p77





Say :O ye that reject Faith,  
I worship not that which ye worship  
Nor will ye worship that which I worship  
And I will not worship that which ye have  
Been wont to worship,  
Nor will ye worship that which I worship  
To you be your way and to me mine.(109:1-6)<sup>845</sup>

The last sentence has also been translated by Arthur Arberry, in his translation of the Qur'an as : "To you your religion, and to me my religion!"(109:5)<sup>846</sup> Muhammad Asad translates this same line as "Unto you, your moral law, and unto me, mine!",<sup>847</sup> and he offers, as he did in 2:356, the definition of the word *din* here, in this context. He provides other verses where *din* is found in the Qur'an, and cites the differing forms that *din* holds :

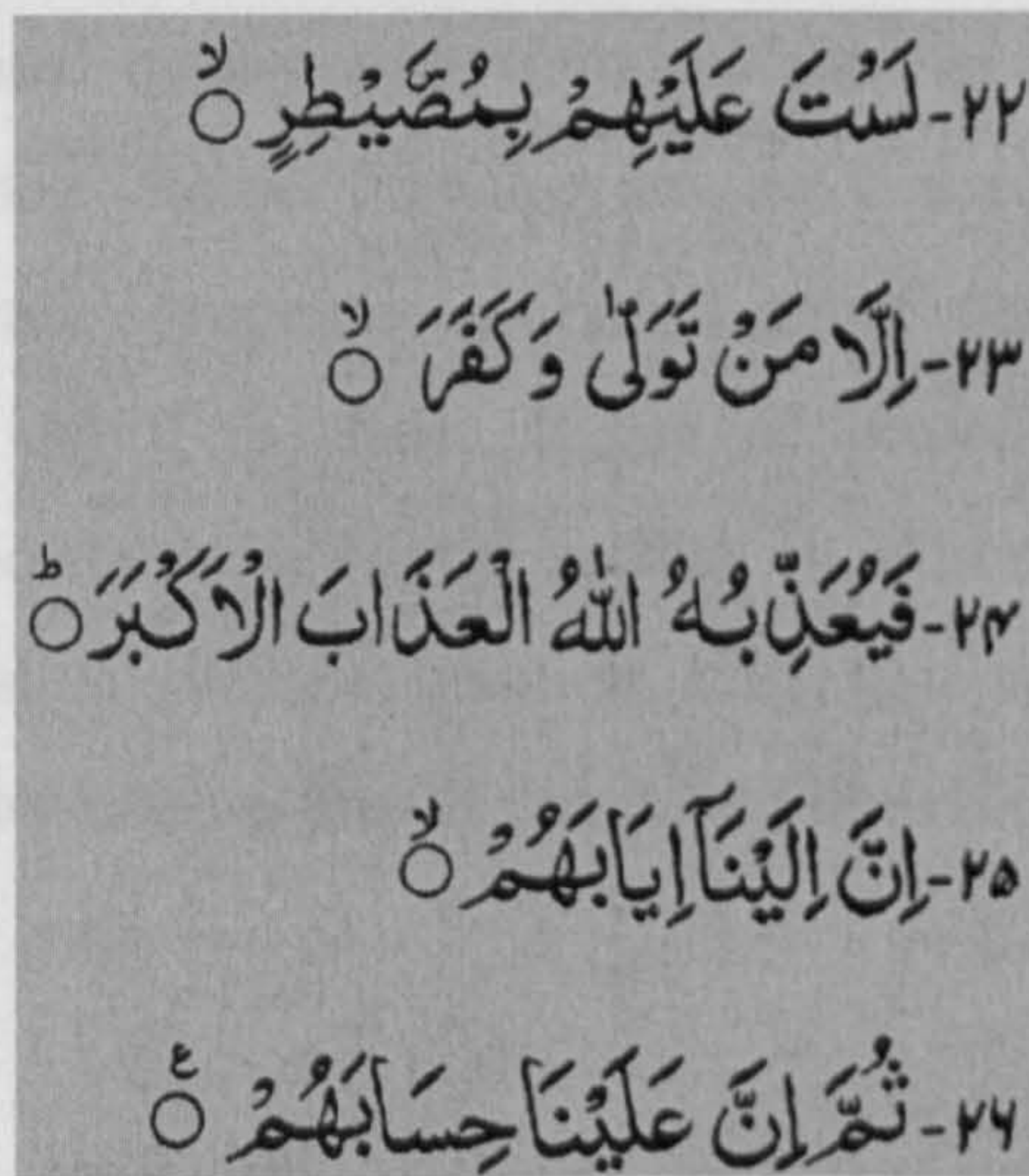
<sup>845</sup> Ali, Abdullah Yusuf, *The Holy Qur'an : Text, Translation and Commentary*, 1969, Sh. Muhammad Ashraf, Kashmiri Bazar, Lahore, Pakistan, Volume 3, p1800

<sup>846</sup> Arberry, Arthur, J., *The Koran : Interpreted*, Oxford University Press, Oxford, 1983, (first published in 1955 by Allen & Unwin Ltd., no place given), p664



The primary significance of *din* is 'obedience'; in particular, obedience to a law or to what is conceived as a system of established – and therefore binding – usages, [sic] i.e. something endowed with moral authority: hence 'religion,' 'faith,' or 'religious law' in the widest sense of these terms, or simply 'moral law,' as in the above instance as well as in 42:21, 95:7, 98:5 or 107:1.<sup>848</sup>

The very theme that this verse promotes, is that it is not up to humans to control other human's in their belief and worship systems. This theme is also found elsewhere in the Qur'an, where it clearly indicates that God alone will punish those who reject Him. Two verses in Surah Ghashiya, 88:22-24, read as :



Thou art not one to manage (men's) affairs But if they turn away and reject Allah – Allah will punish him with a mighty punishment.<sup>849</sup> (88:22-24)

Abdullah Yusuf Ali, comments on the verse 88:22, where he argues that :

The Prophet of God is sent to teach and direct people on the way. He is not sent to force their will, or to punish them, except in so far as he may receive authority to so do. Punishment belongs to God alone. And punishment is certain in the Hereafter, when true values will be restored.<sup>850</sup>

<sup>847</sup> Asad, Muhammad, The message of the Qur'an, p981

<sup>848</sup> Asad, ibid., in footnote 3 on p981

<sup>849</sup> Arabic script and the translation from Ali, Abdullah Yusuf, *The Holy Qur'an*, op.cit., Vol.3, p1729

<sup>850</sup> Ali, Abdullah Yusuf, Ibid. Volume 3, in footnote 6107 on p1729



Muhammad Asad states in his translation of the Qur'an, that the line in verse 22: "thou canst not compel them (to believe)"<sup>851</sup> should mean, in a literal translation of the Arabic script, that "thou hast no power over them"<sup>852</sup> Therefore, the sinners and the disbelievers have the power to change their own mind and find their own genuine faith, as opposed to it being imposed upon them, as coercion achieves no sincere and devout believers.

This point can be argued to have also been portrayed quite openly in *Al-i-'Imran*, the third Surah, within the three verses 3:176-178, which covers the concept of God's balance between guiding those who desire to believe and find Faith, and allowing those who refuse this preciousness, to simply walk away. The main conclusion is that God does not feel insulted or harmed in any way, if individuals, or even groups decide to travel astray from Faith. It is their choice, thus they are the eventual 'losers.' God will remain there to accept the sinner's repentance, but it must come from the person, as an individual's change of mind, in their change of direction to finally accept God's guidance. As Wael Hallaq states within the section on 'Apostasy' in the *Encyclopaedia of the Qur'an*, that "the relatively lenient position of the Qur'an towards apostates" can also be seen with the 'self- reassurance' that is expressed in 3:176-7.<sup>853</sup>

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<sup>851</sup> Asad, Muhammad, *ibid.*, 88:22, p949

<sup>852</sup> Asad, *ibid.*, in footnote 6 on p949

<sup>853</sup> *Encyclopaedia of the Qur'an*, edited by Jane Dammen McAuliffe, Volume One, 'A-D,' see Hallaq, Wael, 'Apostasy,' Brill, Leiden, Netherlands, 2001, p120



**Surah Al-i-Imran, 3:176-178**

١٧٦- وَلَا يَحْزَنْكَ الَّذِينَ يُسَارِعُونَ فِي  
الْكُفْرِ إِنَّهُمْ لَنُيَضِّرُوا اللَّهَ شَيْئًا  
يُرِيدُ اللَّهُ  
أَلَّا يَجْعَلَ لَهُمْ حِطًّا فِي الْآخِرَةِ  
وَلَهُمْ عَذَابٌ عَظِيمٌ ٥  
١٧٧- إِنَّ الَّذِينَ اشْتَرُوا  
الْكُفْرَ بِالْإِيمَانِ  
لَنُيَضِّرُوا اللَّهَ شَيْئًا  
وَلَهُمْ عَذَابٌ أَلِيمٌ ٥  
١٧٨- وَلَا يَحْسَبَنَّ الَّذِينَ كَفَرُوا  
أَنَّمَا نُسَلِّيَ لَهُمْ خَيْرًا لَّا تَنْفُسُهُمْ  
إِنَّمَا نُسَلِّيُ لَهُمْ لِيُزِيدُوا إِثْمًا  
وَلَهُمْ عَذَابٌ مُّهِينٌ ٥

Let not those grieve thee who rush headlong into Unbelief: Not the least harm will they do to Allah : Allah's Plan is that He will give them no portion in the Hereafter, but a severe punishment.

Those who purchase Unbelief at the price of faith - not the least harm will they do to Allah. But they will have a grievous punishment.

Let not the Unbelievers think that Our respite to them is good for themselves: We grant them respite that they may grow in their iniquity: but they will have a shameful punishment. (3:176-178)<sup>854</sup>

Muhammad Asad argues that these three verses are "an allusion to the doctrine of natural law (in the Qur'anic terminology, *sunnat Allah*, 'God's way') to which man's inclinations

<sup>854</sup> Ali, Abdullah Yusuf, Ibid. Volume One, op.cit., p168-169



and actions – as well as all other happenings in the universe – are subject.”<sup>855</sup> Clearly, in these verses, the main theme of interpretation for their meaning reflects the concept of :

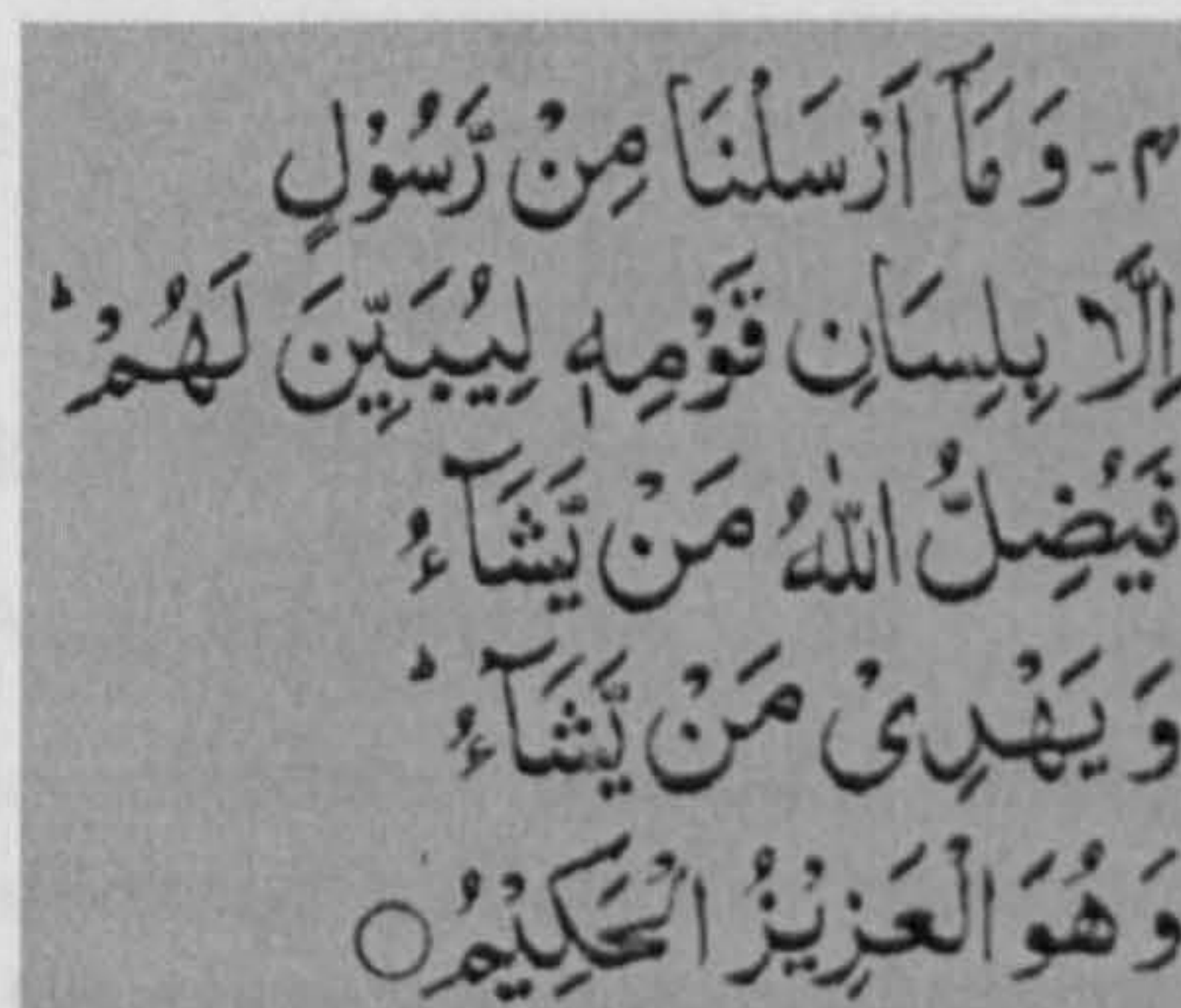
Since all these people are bent on denying the truth, Our giving them rein [that is, freedom of choice and time for a reconsideration of their attitude] will not work out for their benefit but will, on the contrary, cause them to grow in false self-confidence and, thus, in sinfulness.<sup>856</sup>

Expanding on this theme, and on a similar note, Abdullah Yusuf Ali postulates upon the meaning of these verses, by indicating that the main interpretation should focus on the human aspect of the seemingly deliberate escalation of incorrigible immorality of turpitude and iniquitous behaviour in their every day life. As he proclaims, this factor of humans will continue until the inevitable conclusion :

That the cup of their iniquity may be full. The appetite for sin grows with what it feeds on. The natural result is that the sinner sinks deeper into sin. If there is any freedom of will, this naturally follows, though God's Grace is always ready for the repentant. If the Grace is rejected, the increase of iniquity makes the nature of iniquity plainer to those who might otherwise be attracted by its glitter. The working of God's Law is therefore both just and merciful.<sup>857</sup>

Further on this theme, is the verse in Surah Ibrahim, 14:4.

#### Surah Ibrahim, 14:4



He sent an apostle except (to teach) in the language of his (own) people, in order to make (things) clear to them. Now Allah leaves straying those whom He pleases and guides

<sup>855</sup> Asad, Muhammad, op.cit, in footnote 135 on p95

<sup>856</sup> Ibid., in footnote 135 on p95

<sup>857</sup> Ali, Abdullah Yusuf, Ibid. Volume One, in footnote 480 on p169



whom He pleases: and He is Exalted in Power, Full of Wisdom. (14:4)<sup>858</sup>

Abdullah Yusuf Ali interprets the broader meaning of this verse, suggesting that it relates to the very concept that if any revealed 'message' is to be correctly passed-on to those who will listen, then the 'message' needs to be communicated through the colloquial language of those who receive it. This will avoid any confusion or the lack of any understanding, as it aims towards obliterating vocabulary or phrases that – quite possibly – would be intellectually above the uneducated 'masses' of the population. The very message was revealed for every person to hear and understand. And to accept it, should they have the 'Will' to do so. Thus, Yusuf Ali proffers this explanation :

If the object of a Message is to make things clear, it must be delivered in the language current among the people to whom the apostle is sent. Through them it can reach all mankind. There is even a wider meaning of 'language.' It is not merely a question of alphabets, letters, or words. Each age or people – or world in a psychological sense – casts its thoughts in a certain mould or form. God's Message – being universal – can be expressed in all moulds or forms, and is equally valid and necessary for all grades of humanity, and must therefore be explained to each according to his or her capacity or receptivity. In this respect the Qur'an is marvellous. It is for the simplest as well as the most advanced.<sup>859</sup>

Muhammad Asad argues here that this verse flows along the same theme that is also apparent elsewhere in the Qur'an, concerning the factor that God allows those who choose to go astray to, indeed, go astray, for they will eventually receive the repercussions for their lack of Faith on the Day of Judgement. For example, in order to explain this point further, Asad suggests that :

All Qur'anic references to God's 'letting man go astray' must be understood against the background of 2:26-27 – 'none does He cause to go astray save the iniquitous, who break their bond with God': that is to say, man's 'going astray' is a consequence of his own attitudes and

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<sup>858</sup> Arabic script and Translation from Ali, Abdullah Yusuf, Vol.Two, op.cit., p620

<sup>859</sup> Ali, Abdullah Yusuf, Vol.Two, ibid., in footnote 1874 on p620



inclinations and not a result of an arbitrary 'predestination' in the popular sense of this word.<sup>860</sup>

Another very interesting commentary upon the concept of whether the ability for humans to have 'free will' is either based on their intentional 'human-made' independent decision, or whether it is the inevitable 'predestination,' having been pre-decided by God, has been presented by the Qur'anic exegete Mahmud ibn 'Umar az-Zamakhshari. In his interpretation of this verse, 14:4, and discussing the wider theme of the level of 'free will,' Zamakhshari declares, quite openly, that:

God does not cause anyone to go astray except one who, as He knows, will never attain to faith; and He does not guide anyone aright except one who, as He knows, will attain to faith. Hence the [expression] 'causing to go astray' denotes [God's] leaving [one] alone (*takhliyah*) and feeling and depriving [him] of all favour, whereas [the expression] 'guidance' denotes [His] grant of fulfilment (*tawfiq*) and favour....Thus, He does not forsake anyone except those who deserve to be forsaken, And does not bestow His favour upon anyone except those who deserve to be favoured.<sup>861</sup>

Zamakhshari makes a very close link with the message in this verse to that which is portrayed in 16:93. This particular verse will be discussed, in more detail, in the following pages, but Zamakhshari argues that both of these verses contain the identical phrase of 'God lets stray those whom He pleases and also guides those whom He pleases.' His commentary on both 14:4 and 16:93 proclaims that :

[God] forsakes him who, as He knows, will [consciously] choose to deny the truth and will persevere in this [denial]; and.....He bestows His favour upon him who, as He knows, will choose faith: which means that He makes the issue dependent upon [man's] free choice (*al-ikhtiyar*), and thus on his deserving either [God's] favour or the withdrawal of [His] aid.....and does not make it dependent

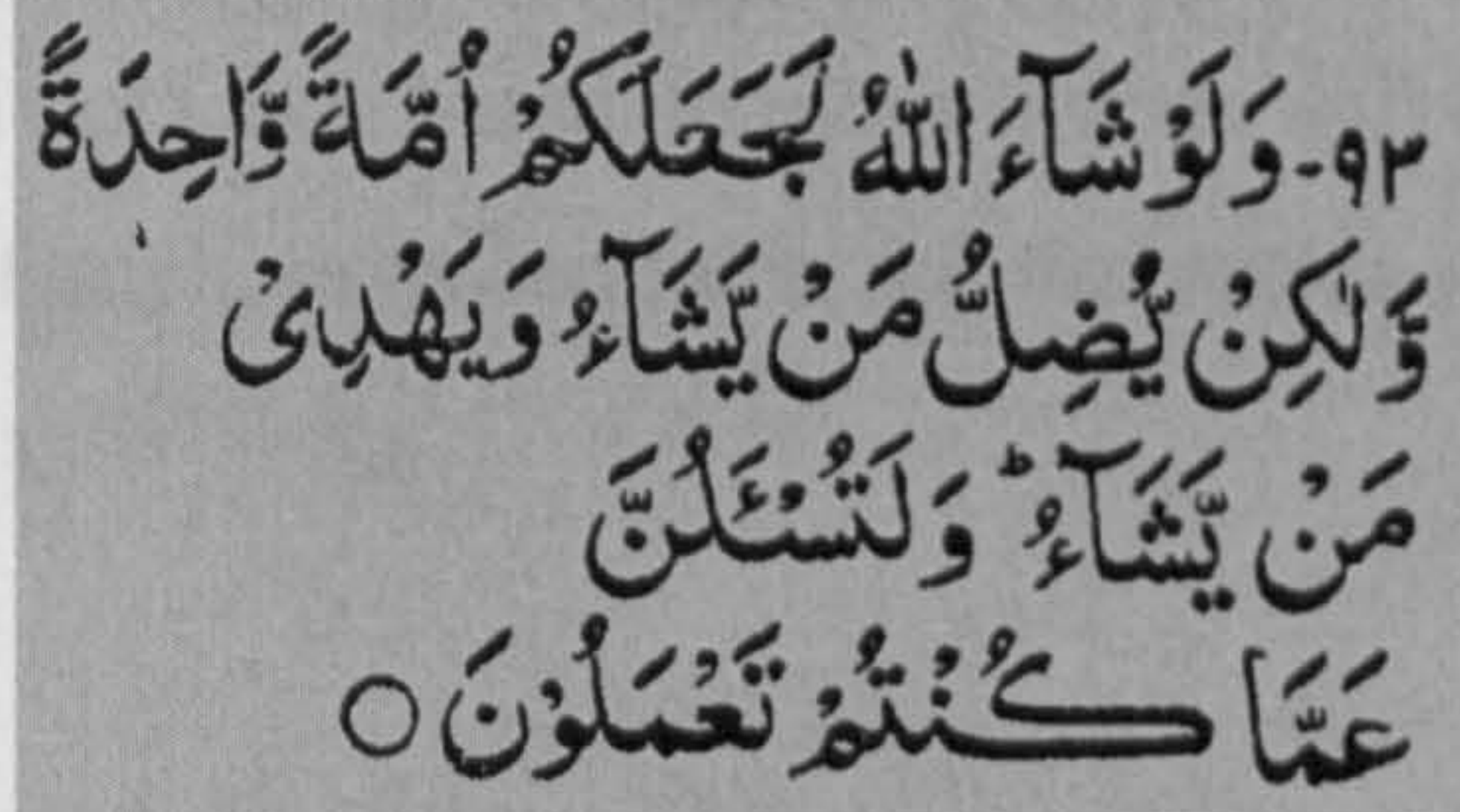
<sup>860</sup> Asad, Muhammad, op.cit., in footnote 4 on p371

<sup>861</sup> Asad, Muhammad, Ibid., in footnote 4 on p371 Asad cites the work of Zamakhshari (d.538H), as : Zamakhshari Mahmud ibn 'Umar, *Al-Kashshaf 'an Haqa'iq Ghawamid at-Tanzil*, and also, Zamakhshari Mahmud ibn 'Umar, *Asas al-Balaghah*, but no publisher or date of publication was provided for either book.



on compulsion [i.e., predestination], which would rule out [man's] deserving anything of the above.<sup>862</sup>

### Surah Al-Nahl, 16:93



If Allah so willed, He could make you all one People: But he leaves straying whom he pleases and He guides whom he pleases: but ye shall certainly be called to account for all your actions.(16:93)<sup>863</sup>

As Abdullah Yusuf Ali explains when interpreting the meaning of this verse :

God's Will and Plan, in allowing limited free-will to man, is not to force man's will, but to give all guidance, and leave alone those who reject that guidance, in case they should repent and come back to Grace. But in all cases, in so far as we are given the choice, we shall be called to account for all our actions. 'Leaving to stray' does not mean that we can do what we please. Our personal responsibility remains.<sup>864</sup>

Mahmud ibn 'Umar az-Zamakhshari concludes his views upon the concept of 'free will' as it not being a 'pre-determined' factor by God, but that it specifically belongs to every individual's personal choice, should they wish and desire to take an erroneous approach towards life. He stimulates this argument, by reflecting with the interesting question of :

If [it were true that] God compels [men] to astray or, alternatively, to follow His guidance – why should He have

<sup>862</sup> Ibid., in footnote 4 on p371 See also Zamakhshari Mahmud ibn 'Umar, *Al-Kashshaf 'an Haqa'iq Ghawamid at-Tanzil*, and also, Zamakhshari Mahmud ibn 'Umar, *Asas al-Balaghah*.

<sup>863</sup> Arabic script and Translation from Ali, Abdullah Yusuf, Volume Two, op.cit., p682

<sup>864</sup> Yusuf Ali, Vol.Two ibid., in footnote 2133 on p682



postulated their deeds as something for which they will be held responsible?<sup>865</sup>

There are many other similar verses which intertwine with these themes, of God's message offering humans their free will, and free choice to chose Faith, or reject it, as the pain will be theirs and not Gods – and no other human will be effected by such an act.

Two final examples of such, assessed here, are the verses in Surah *Yunus*, 10:99 and one in Surah *Kahf*, 18:29 :

### Surah Yunus, 10:99

٩٩- وَلَوْ شَاءَ رَبُّكَ لَأَمَنَّ مَنْ فِي الْأَرْضِ  
كُلَّهُمْ جَمِيعًا أَفَأَنْتَ تُكْرِهُ النَّاسَ  
حَتَّى يَكُونُوا مُؤْمِنِينَ ۝

If it has been they Lord's Will they would have all believed – all who were on earth! Wilt thou then compel mankind against their will – to believe!<sup>866</sup> (*Yunus*, 10:99)

Muhammad Asad raises the interesting point in this verse, that :

The Qur'an stresses repeatedly the fact that 'had He so willed, He would have guided you all aright' (6:149) – the obvious implication being that He has willed it otherwise: namely, that He has given man the *freedom* to choose between right and wrong, thus raising him to the status of a moral being (in distinction from other animals , which can only follow their instincts).<sup>867</sup>

Finally, but not least, is the classic expression of 'free will' to everyone it is their own individual choice to achieve genuine Faith in this life, or lose God's satisfaction, when they will have to explain themselves to God – and answer the questions of as why they rejected Faith - and why they also rejected believing in God – on the Day of Judgement.

<sup>865</sup> Asad, Muhammad, op.cit., in footnote 118 on p15-16. Also see Zamakhshari (d.538H), as : Zamakhshari Mahmud ibn 'Umar, *Al-Kashshaf 'an Haqa'iq Ghawamid at-Tanzil*, and also, Zamakhshari Mahmud ibn 'Umar, *Asas al-Balaghah*, op.cit., (no page number, date or publisher was provided.)

<sup>866</sup> Arabic script and the translation from Ali, Abdullah Yusuf, *The Holy Qur'an*, op.cit., Vol.2, p509-510

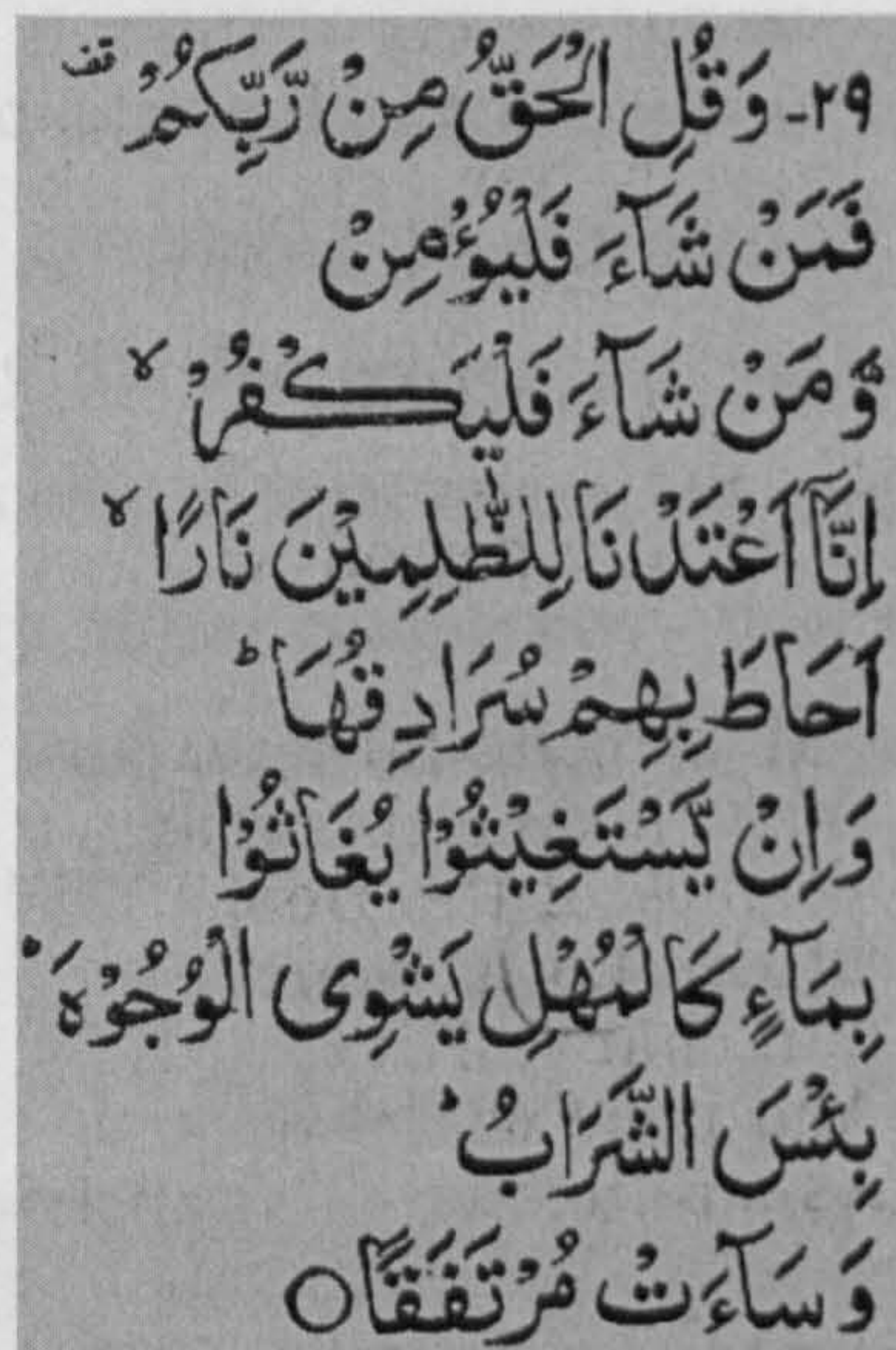
<sup>867</sup> Asad, Muhammad, ibid., in footnote 122 on p308. Also see 6:149, ibid., on p197. Also see Ayoub, Mahmoud, 1994 'Religious Freedom and the Law of Apostasy in Islam' in *Islamochristiana*, 20, p77.



The translation of this verse explains its meaning to enough extent without taking the debate any further in this context. It certainly could not be more open and uninhibited in presenting every human with the choice of Faith - and then seeing if they have the courage and the confidence to undertake the challenge of understanding and accepting the task of devout worship to God, living the life as a humble person.

Surah *Kahf*, 18:29 speaks of both 'Justice' and 'Truth' with the most powerful definitions :

### Surah Kahf, 18:29



Say, "The Truth is from your Lord" Let him who will, believe, and let him who will, reject (it):

For the wrong-doers We have prepared A Fire whose (smoke and flames), like The wall and roof of a tent, will hem them in: if they implore relief they will be granted water like melted brass, that will scald their faces: How dreadful they drink! How uncomfortable a couch to recline on!<sup>868</sup> (Surah *Kahf*, 18:29)

<sup>868</sup> Arabic script and the translation from Ali, Abdullah Yusuf, op.cit., Vol.2, p738. Also see Ayoub, Mahmoud, 'Religious Freedom and the Law of Apostasy in Islam,' Ibid., p77



As Mahmoud Ayoub interprets the meaning of both of these, 10:99 and 18:29, as verses in particular, this then leads to the meaning of the Qur'an in general – and therefore, the full meaning of 'Islam' :

The Qur'an categorically repudiates religious coercion and affirms that faith and rejection of faith, right guidance and mis-guidance ultimately rest with God to give or withhold as He will..... The principle of free choice in the matter of personal faith is ultimately conditioned by God's absolute and eternal power and knowledge, revelation of the truth and human understanding.....human beings remain free to accept or reject faith, and hence to choose eternal reward or eternal punishment.<sup>869</sup>

It will now be useful to assess the difference of opinion within the four *maddhab*, (Islamic schools of law), concerning whether women who apostatise from Islam should receive the death penalty for this act, or not. As the schools of *fiqh* (jurisprudence) diametrically differ in his area of legal sentencing, and the punishments that are provided as the established penalty, differ completely - then this can be argued as being clear enough evidence that the legal death sentence for apostasy cannot be a clear-cut message from the verses of the Qur'an.

### Âl-'Imrân, 3: 86-90

كَيْفَ يَهْدِي اللَّهُ قَوْمًا كَفَرُوا بَعْدَ إِيمَانِهِمْ وَشَهِدُوا أَنَّ الرَّسُولَ حَقٌّ  
وَجَاءَهُمُ الْبَيِّنَاتُ وَاللَّهُ لَا يَهْدِي الْقَوْمَ الظَّالِمِينَ ﴿٨٦﴾

How shall Allâh guide those who reject faith after they accepted it and bore witness that the Apostle was true and that Clear Signs had come to them? But Allâh guides not a people unjust. (v.86)<sup>870</sup>

Ibn 'Abbas comments on verses 3: 86-90, and presenting its meaning in very similar manner as the translation that offered above, by Abdullah Yusuf Ali. Ibn 'Abbas states the verse indicates the point of how could Allah guide to His religion those who had reverted to the state of disbelief, after they had believed in Allah, witnessed Muhammed

<sup>869</sup> Ayoub, Mahmoud, Ibid., p77



as His Prophet and had received and accepted the Guidance and the Book. He furthers this, by suggesting the verse informs believers that such those who chose to disbelieve, will be punished by Allah and cursed by both the Angles and the believers, while they will reside in the Hellfire eternally. The only people who will be exempted from this punishment, are those who sincerely repent and renounce polytheism and disbelief. However, those who revert from belief back into *kufir* and persistently carry on with disbelief, they will not have their repentance accepted, as long as they continued to disbelieve. Therefore, these type of people 'would be the most misguided.'<sup>871</sup>

Al-Baydawi states that this verse illustrates how remote the possibility is that God will guide those who deviate from the straight path after the righteous manner in which to live through faith, has clearly been detailed to them. Some scholars use this verse as a basis for their argument that an apostate's repentance will not become acceptable, as was As Ibn 'Abbas pointed out.<sup>872</sup>

Al-Shawkani argues that the phrase "How shall Allah guide..." means that Allah will not guide disbelievers to the right-path, once they had believed and once the signs of the Prophet Muhammad had been made clear to them. He also suggests that the phrase "Allah guides not a people unjust" means that Allah will not guide apostates. However, those who offer repentance and re-establish their belief, by moving away from their distorted opinion during their apostasy, they will be accepted as genuine believers. This situation, argues al-Shawkani, is undisputed proof that it is permissibility for accepting an apostate's repentance, if-and-when they sincerely decide to return to al-Islam.<sup>873</sup> It is important to note that this approach presents a very flexible and tolerant level of acceptance, in allowing each person to decide, at their own time, the when-and-if they will become a firm believer. This view becomes a very strong position to counter the argument for the death penalty for apostates, as it provides the apostate with their entire life-time to always have the potential to return to true faith. Their eventual return will

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<sup>870</sup> Ali, Abdullah Yusuf, *The Holy Qur'an*, op.cit., Vol I, p144, Qur'an; 3:86

<sup>871</sup> Ibn 'Abbas, *Tanwir al-Miqbas min tafsir Ibn 'Abbas*, op.cit., p67-68

<sup>872</sup> Baydawi, Abdallah Ibn Omer, *Anwar al-Tanzil wa asrar al-ta'wil*, Vol I., op.cit., p169



benefit them before Judgement Day, after their natural death, as opposed to them being immediately killed for their sin of *kufur*, without them having a chance to re-assess their understanding of faith throughout their life-time.

Al-Tabari suggests that verse 3:86 is believed to have revealed concerning al-Harith Ibn Souayid al-Ansari, who had become an apostate from Islam. However, Al-Tabari offers another interpretation of the verse, in that it was revealed when twelve men had turned back to (*kufur*) disbelieve and joined the Qurayish tribe. The men apparently then wrote to their families, inquiring whether their repentance could ever be accepted, which is why the verse reveals: "except for those that repent..." A third interpretation of this verse, argues that it was revealed for the Jews and Christians who, despite their knowledge about and belief in the Prophet Muhammad, and acknowledging his signs and attributes, that have been mentioned in their own Scriptures, they still denied and disbelieved his Prophethood, when he was sent. This opinion argues that the punishment for these people will be undertaken by Allah, and they will be cursed by both humans and angels.<sup>874</sup> This third opinion can also be used to defend the anti-death penalty for apostates, as humans will offer curse, but it is God who will deliver their punishment, in the Hereafter.

Al-Zamakhshari makes an interesting comment on 3:86. He believes that the verse states 'how shall Allah bestow them with delicate Grace when they<sup>875</sup> are not a people of benevolence'. Such disbelievers do not even deserve Allah's Gracefulness, because He knows of their stubborn determination to remain in disbelief, after they had once believed and had witnessed the truthfulness of Muhammad's Prophethood, as well witnessing and acknowledging the clear signs and the miracles that have been declared in the Qur'an.<sup>876</sup>

Ibn Kathir comments on this verse, by reporting what has been attributed to Ibn 'Abbas, about a man from the Ansar who had embraced Islam, but then he later reverted and

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<sup>873</sup> Al-Shawkani, , *Fath al-Qadir: al-Jami' bayn fanni al-Riwaya wa al-Diraya min 'ilm al-tafsir*, Vol. 1, op.cit., p451-452

<sup>874</sup> Al-Tabari, *Jam'a al-Bayan 'an ta'wil ayat al-Quran*, Vol. 4, op.cit., p338-339 and p340

<sup>875</sup> Al-Zamakhshari mentions three possibilities as to who are those mentioned in the verse: 1- the Jews, 2- a group of Muslims who reverted to *kufur*, joining the disbelievers in Mecca, or 3- al-Harith Ibn Souayid.

<sup>876</sup> Al-Zamakhshari, *al-Kashshaf*, op.cit., Vol. I, p381-382



joined the polytheists. At a later date, he felt sorry for apostasy, and sent his people to ask the Prophet if it was acceptable for him to repent and return to al-Islam. It is believed to be was due to his request, that the Qur'an then revealed "Verily, Allah is oft-Forgiving, Most Merciful."<sup>877</sup>

All the classical commentaries concerning this verse, offer no hint that promotes the death penalty for the sin of apostasy. It can be argued that quite the opposite view is portrayed in the various *tafsir* for this – and every other verse that has been commented upon.

The main theme which seems to develop, is the view that allows an apostate to make their sincere repentance, should they eventually decide to rediscover genuine faith. The only people repentance would not be accepted from are those who cannot move away from the mind-set of disbelief, by their continual questioning of God's authenticity. However, God's reaction to these people, is simply to avoid Guiding them, as they repeatedly refuse to accept such Guidance that had been delivered. The punishment they will receive will be the wrath of Allah on Judgement Day, as that is a confrontation that they can never avoid encountering. Although they have their natural life-time to reconsider their faith, and will always have the chance to re-embrace worshipping God, their punishment will be delivered in the Hereafter, should they die in disbelief.

This overall view counters the need for the death penalty for apostasy, as no other human has the authority to decide whether someone else is a believer or not. The faith of one person is a private thing between themselves and God. It is God who will then present the rewards in the Hereafter, or the wrath due to a disbelievers lack of trust in God and lack of *'iman* (faith), during their life time.

### **3.4 The punishment of apostasy in the *Hadith***

The interpretation of some of the *ahadith* which refer to the legal penalty for the acts of blasphemy and apostasy, will show that the death penalty seems to have its source in

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<sup>877</sup> Ibn Kathir, '*Tafsir al-Quran al-'azeem*,' op.cit., Vol. I, p333-334



*ahadith* rather than in the Qur'an. As Khadduri explains : "The traditions are more explicit in providing the death penalty for everyone who apostatizes from Islam,"<sup>878</sup> - which is a certain admission that the Qur'an is not *explicit* with this message in any verse, and that it does not explicitly appear through any of the main themes in the overall Qur'anic message.

The summary of the above description and the differing views that have been assessed by Islamic scholars, Islamic jurists and Islamic theologians, through *tafsir*, can be highlighted with the comments and observations presented by the respected academic in this field, Abdullahi Ahmed An-Na'im. In concluding, with an overview of the 'whole picture' which has been presented above, he argues :

The Qur'an deals with apostasy in several cases: e.g. chapter 4, verse 90; chapter 5, verse 59 and chapter 16, verse 108. None of these verses expressly provide for the penalty for apostasy in this life, but they all condemn the apostate in very harsh and unequivocal terms. The punishment of apostasy in *Shari'a* is based on Sunna. It is reported, for example, that the Prophet said : 'The blood of a fellow Muslim should never be shed except in three cases: That of the adulterer, the murderer and whoever forsakes the religion of Islam.' It is also reported that the Prophet, peace be upon him, said : 'Whosoever changes his religion, kill him.'<sup>879</sup>

Initially the statement of the 'three cases' will be discussed and then the final statement of 'Whosoever changes his religion, kill him' will be addressed. The 'three cases' is stated here as<sup>880</sup> :

لا يحلُّ دَمُ امرئٍ مُسلمٍ يشهد أن لا إله إلا الله، وإني رسول  
الله إلا باحدى ثلاث، الثيبُ الزاني والنفس بالنفس،  
والتارك لدينه مُفارق للجماعة.

Mohammad Hashim Kamali translates this *hadith* as :

<sup>878</sup> Khadduri, Majid, *War and Peace in the Law of Islam*, op.cit., p150

<sup>879</sup> An-Na'im, Abdullahi Ahmed, 1986, 'The Islamic Law of Apostasy and it's Modern Applicability : A Case From The Sudan' in *Religion*, Vol. 16, p211

<sup>880</sup> Arabic text from Kamali, Mohammad Hashim, *Freedom of Expression in Islam*, p96



The blood of a Muslim who professes that there is no god but Allah and that I am His Messenger, is sacrosanct except in three cases: a married adulterer; a person who has killed another human being; and a person who has abandoned his religion, while splitting himself off from the community (*mufariq li'l-jama'ah*).<sup>881</sup>

Kamali states that this *hadith* clearly shows that in this specific case, an apostate must also have abandoned the Islamic community (*mufariq li'l-jama'ah*), by challenging the legitimacy of its leadership, hence receiving the death penalty due to the act of high treason.<sup>882</sup> Influencing other believers is the main issue of concern here, because the *hadith* that relates to the legal ruling of death penalty for Muslims addresses this very point. The *hadith* in question states that there are only three cases which result in the death penalty: for a married adulterer; a murderer, and a person who leaves their religion, while simultaneously splitting themselves away from the community in an active manner (*mufariq li'l-jama'ah*).

This *hadith* states clearly that apostasy is just one peripheral factor in the act committed. The phrase *mufariq li'l-jama'ah* emphasises that the person involved would be actively challenging the authority of the community's leadership. The death penalty in this case is clearly due to the act of sedition or treason against the state – so any change in the person's religious belief, or whether they still believe in God or not, is irrelevant. Their crime is the attack against the legitimacy of the leaders running the community and, quite possibly, the attack against other devout believers who are part of that community. Therefore, in doing this, the convicted receive the death penalty as they are *al-baghi*, a traitor to the community, whereas someone who undertakes a very private, personal change of their religious belief does not effect or influence anyone else, but themselves. If they were to actively attempt to propagate their new religion to other people, this would be another separate crime, which has its own separate legal punishment for such acts. Propagation would not be the actual act of apostasy from Islam.

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<sup>881</sup> Kamali, Mohammad Hashim, Ibid., p96



In order to reconcile the words of this *hadith* with the message of the Qur'an, in Sura 5, *ayah* 33-34, El-Awa quotes from Ahmad 'Abd al-Halim b. Majd al-Din Ibn Taymiyya's position on this point, as stated in his work *al-Sarim al-Maslul 'ala Shatim al-Rasul*.<sup>883</sup> Ibn Taymiyya's interpretation of this *hadith* was that the crime being referred to in this *hadith* is the *hadd* of *hiraba* (armed robbery). He argues that this crime is the explanation of the words referring to 'one who forsakes his religion.....' Along this line of argument, this *hadith*, has nothing to do with the basic essence of apostasy, as in the leaving of a religion with no connection or interest in fighting against Allah, His Prophet or other believers. Thus, El-Awa argues that this *hadith* indicates that anybody committing the crime of *hiraba* separate themselves from their religion, because a genuine Muslim would not commit such a crime. He strongly argues that "Again, the law for apostasy cannot be inferred from this *hadith*."<sup>884</sup>

In another version it reads as :

The blood of any Muslim who certifies the *tawhid* and the *risala*<sup>885</sup> should not be shed, except in either of the following three : the married adulterer, the murderer, the man who deviates from the religion of Islam and gives up the group of Muslims.<sup>886</sup>

As described above, this *hadith* states that the life of a Muslim may only be taken in three cases. One of these is if 'he forsakes his religion and separates himself (*al-tarik*) from his community (*li-l-jama'a*).' In another version, the words relate to one 'who forsakes (*al-*

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<sup>882</sup> Kamali, Mohammad Hashim, Ibid., p96. Also see El-Awa, Mohammad, Selim, *Punishment in Islamic Law*, op.cit., p52

<sup>883</sup> El-Awa, Ibid., p52, El-Awa also cites Ibn Taymiyya, no date given, *Al-Sarim al-Maslul*, p315-p396

<sup>884</sup> El-Awa, Ibid., p52,

<sup>885</sup> *tawhid* means Monotheism; Oneness of God and *risala* means the truth of Muhammad's Prophethood. Kamali, Mohammad Hashim, op. cit., p268, p329

<sup>886</sup> Khan, Muhammad Muhsin, *The Translation of the Meanings of Sahih Al-Bukhari*, op.cit., p10-11, also see Tahir-ul-Qadri, Muhammad, *Islamic Penal System and Philosophy*, op. cit., p386, Tahir-ul-Qadri quotes from Sulaiman bin Al-Ash'ath bin Ishaq Al-Azdi As-Sijistani Abu Da'ud, vol. II, p598, (no date given) also see al-Bukhari, Vol. 9, hadith 17 from e:\islamica\winhadis\winhadis.tex and e:\islamica\bukhari\bukhari.tex CDRom *islamica : Digital Library of Islamic Software*, op. cit. Also see El-Awa, op. cit., p52 and Samuel M. Zwemer, *The Law of Apostasy in Islam*, op.cit., p37 and also *Al-Hedaya*, Vol. II: Section : 'Of the Manner of Punishment, and the Infliction thereof', Serial number 3789, from e:\islamica\lawbase\lawbase.tex on CDRom *islamica*, op.cit. Also see Al-Misri, Ahmad Ibn Naqib, 'Umdat al-Salik, translated and edited by Noah Ha Mim Keller, 1994, translated title as *The Reliance of the Traveller*, Amana Publications, Beltsville, USA, p519. This can be found on e:\islamica\LAWBASE\Reliance on the CDRom *islamica : Digital Library of Islamic Software*, op. cit.



*mufariq*) his community.<sup>887</sup> Separation from the community, or forsaking it, indicates that a Muslim leaves the stronghold of faithful believers and joins the enemy ranks of the unbelievers. These words of the *hadith* refer to a war-time context of a believer deserting the religion and the community that surrounds it. One example of this change of religion and the way it has been dealt with by the Prophet, which is reported by both Sahih al-Bukhari, several times in his collection of *ahadith*, and Malik bin Anas bin Malik bin Abu 'Aamir Al-Asbahi in his work *Kitab al-Muwatta'* concerns a Bedouin. The *hadith* manifests the tolerance and acceptance of the Prophet in his expression that it is up to each individual to choose the free choice of their own path:

عَنْ جَابِرِ رَضِيَ اللَّهُ عَنْهُ: جَاءَ أَغْرَابِيٌّ إِلَى النَّبِيِّ ﷺ فَبَايَعَهُ  
عَلَى إِلَّا سَلَامٍ فَجَاءَ مِنَ الْغَدِ مَحْمُومًا فَقَالَ: أَقْلِنِي، فَأَبَى  
- ثَلَاثَ مَرَّاتٍ فَقَالَ الْمَدِينَةُ كَالْكَبِيرِ تَنْفِي خَبَثِهَا وَتَنْصَعُ  
طَيِّبُهَا.

Narrated by Jabir ibn Abdullah al-Ansari :

A bedouin gave the Pledge of allegiance to Allah's Apostle for Islam and the bedouin got a fever where upon he said to the Prophet 'Cancel my Pledge.' But the Prophet refused. He came to him (again) saying, 'Cancel my Pledge.' But the Prophet refused. Then (the bedouin) left (Medina). Allah's Apostle said: 'Medina is like a pair of bellows (furnace): It expels its impurities and brightens and clears its good.'<sup>888</sup>

The Bedouin initially accepted Islam and the next day when suffering a fever, believing that it was due to his conversion demanded to the Prophet that he wanted to remove his pledge of faith. As the *hadith* relates, the Prophet refused to allow this return to

<sup>887</sup> 'Ali, Muhammad, *Religion of Islam*, op. cit., p596-597, also see El-Awa op.cit. page 52

<sup>888</sup> Khan, Muhammad Muhsin, *The Translation of the Meanings of Sahih Al-Bukhari*, op.cit., Vol.9, hadith No.316, p241 and Vol. 9, hadith No. 318, p242 and Vol.9, hadith No.323, p246 and Vol. 9, hadith No. 424, p316 ; also see *Sahih al-Bukhari*, Vol. 3 hadith No. 107 from e:\islamica\winhadis\winhadis.tex and e:\islamica\bukhari\bukhari.tex and also Malik bin Anas bin Malik bin Abu 'Aamir al-Asbahi Malik, *Muwatta' Malik*, hadith number 45.2.4 from e:\islamica\winhadis\winhadis.tex on the CD Rom *islamica : Digital Library of Islamic Software*, op. cit. and also see 'Ali, Muhammad, *Religion of Islam*, op. cit., p597. Aslo Ahmad, Hazrat Mirza Tahir, *Mazhab ke Nam per Khoon (Bloodshed in the Name of Religion)*, late



polytheism, but as the Bedouin was relentless in his denial of accepting Islam, thus the Prophet's result was to let him walk away from the Islamic community. He clearly expressed no anger and certainly no capital punishment.<sup>889</sup> As Muhammad Zafrullah Khan explains in his work, *Punishment of Apostasy in Islam* :

This incident is most instructive. The man's repeated request to the Holy Prophet that he might be released from his pledge is conclusive proof that apostasy was not a punishable offence. Had it been punishable, as is affirmed by some of the misguided divines, with death, this man would never have approached the Holy Prophet with the request that he might be released from his pledge. He would have slipped away from Medina secretly, lest he should be apprehended and put to death.

Again, if the penalty of apostasy had been death, why did the Holy Prophet, peace be upon him, not warn him that as he had ceased to believe in Islam, he was liable to be executed? As he persisted in his request to be released from his pledge, why was he not executed after his second request? Why did not the Companions of the Holy Prophet, who were present on each occasion, warn him that as he had ceased to believe in Islam, he had incurred the penalty of death?<sup>890</sup>

In Zafrullah's final conclusion, he suggests that the Prophet's acceptance and his almost encouragement for the Bedouin to remove himself from the Islamic community, becomes a manifestation of the Prophet's positive attitude towards those who refuse to accept the path to God. They will receive the wrath of God on Judgement Day when they will be asked 'why did they reject Faith?' As Zafrullah states :

Further, the Holy Prophet appears to have been pleased that the man had departed from Medina. The observation that the Holy Prophet made is an indication that the Holy Prophet considered the man's departure from Medina a

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1950's, English Translation entitled *Murder in the Name of Allah*, op.cit., p65. Also, the Arabic script is from Kamali, Mohammad Hashim, op cit., p97

<sup>889</sup> Khan, Muhammad Zafrullah, *Punishment of Apostasy in Islam*, no date given, London Mosque, England, p34. Also see Syed Barakat, Ahmad, 'Conversion From Islam,' in *The Islamic World, From Classical to Modern Times – Essays in Honour of Bernard Lewis*, (Eds.) Clifford Edmond Bosworth, Charles Issawi, Roger Savory and A. L. Udovitch, 1989, The Darwin Press, Inc., Princeton, USA, p7

<sup>890</sup> Khan, Muhammad Zafrullah, *Punishment of Apostasy in Islam*, Ibid., p35



good riddance, as his continued presence in Medina would not have been desirable.<sup>891</sup>

One more example of a change in religion is the *hadith* of al-Bukhari, which describes a Christian who converted to Islam and then apostatised back to Christianity.

Anas ibn Malik said :There was a Christian who embraced Islam and read surat *al-Baqarah* and *al-Imran*, and he used to write (the revelations) for the Prophet (peace be upon him). Later on he returned to Christianity again and he used to say: 'Muhammad knows nothing but what I have written for him.' Then Allah caused him to die, and the people buried him, but in the morning they saw that the earth had thrown his body out. They said, 'This is the act of Muhammad and his companions. They dug the grave of our companion and took his body out of it because he had run away from them.' They again dug the grave deeply for him, but in the morning they again saw that the earth had thrown his body out. They said, 'This is an act of Muhammad and his companions. They dug the grave of our companion and threw his body outside it, for he had run away from them.' They dug the grave for him as deep as they could, but in the morning they again saw that the earth had thrown his body out. So they believed that what had befallen him was not done by human beings and had to leave him thrown (on the ground).<sup>892</sup>

This *hadith* case involves Abdullah ibn Sa'd ibn AbuSarh, who was the Prophet's scribe of the Qur'an, as it was revealed. Abdullah ibn Sa'd ibn AbuSarh then renounced Islam and departed from the Prophet's his company by moving to Mecca, where he spread such rumours that the Prophet dictated the Qur'an to him and that he, Ibn AbuSarh, would often finish off the sentences for the Prophet, who did not object to such help. Ibn AbuSarh, obviously, portrayed the Prophet as some 'self-created' prophet and a liar. This case is covered in the *ahadith* collection of Abu Da'ud and explains that the Prophet, after the first desire to kill Abdullah ibn Sa'd ibn AbuSarh due to his acts, finally gave

<sup>891</sup> Khan, Muhammad Zafrullah, Ibid., p34-35

<sup>892</sup> 'Ali, Muhammad, *Religion of Islam*, Ibid., *hadith* quoted as "61:25," p597, also see al-Bukhari, Vol. 4, *hadith* 814 from e:\islamica\winhadis\winhadis.tex and e:\islamica\bukhari\bukhari.tex CDRom

*islamica : Digital Library of Islamic Software*, op. cit. Also see O'Sullivan, Declan, '*Al-Hudud* : الحدود : Definition of Crimes and Punishments stated within the Qur'an and Sunna - Focusing on 'Apostasy' [*Ridda wa irtidad* : ردة و ارتداد ] as a *Hadd* : حد , op.cit, p61



total protection and forgiveness to him. The *hadith*, narrated by Abdullah ibn Abbas reads as :

Abdullah ibn AbuSarh used to write (the revelation) for the Apostle of Allah (peace\_be\_upon\_him). Satan made him slip, and he joined the infidels. The Apostle of Allah (peace\_be\_upon\_him) commanded to kill him on the day of Conquest (of Mecca). Uthman ibn Affan sought protection for him. The Apostle of Allah (peace\_be\_upon\_him) gave him protection.<sup>893</sup>

This is also covered in another *hadith* held by Abu Da'ud and explains that the Prophet, on offering Abdullah ibn Sa'd ibn AbuSarh his allegiance three times and receiving no reply, until the third request. The Prophet then asked the believers who surrounded him, whether they would have killed him or not, for denying such allegiance. However, when they replied suggesting they should have received a sign or a signal to promote this act, the Prophet announced that it is not his duty to plan ahead using the deception with a treacherous method of such 'hints'.

On the day of the conquest of Mecca, Abdullah ibn Sa'd ibn AbuSarh hid himself with Uthman ibn Affan. He brought him and made him stand before the Prophet (peace\_be\_upon\_him), and said: Accept the allegiance of Abdullah, Apostle of Allah! He raised his head and looked at him three times, refusing him each time, but accepted his allegiance after the third time. Then turning to his companions, he said: Was not there a wise man among you who would stand up to him when he saw that I had withheld my hand from accepting his allegiance, and kill him? They said: We did not know what you had in your heart, Apostle of Allah! Why did you not give us a signal with your eye? He said: It is not advisable for a Prophet to play deceptive tricks with the eyes.<sup>894</sup>

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<sup>893</sup> Found in the *ahadith* collection of Abu Da'ud, *hadith* number : 4345, narrated by Abdullah ibn Abbas, in *e:\winhadis\winhadis.tex* on CDROM *Islamica : Digital Library of Islamic Software*, Islamic Computing Centre, London, [ [www.ummah.org/icc](http://www.ummah.org/icc) ]

<sup>894</sup> Abu Da'ud, *hadith* number : 4346, narrated by Sa'd ibn Abu Waqqas, Found in the *ahadith* collection of Abu Da'ud in *e:\winhadis\winhadis.tex* on CDROM *Islamica : Digital Library of Islamic Software*, op.cit. The words "treacherous" and "hints" can be found in another version of this *hadith* in collection of Abu Da'ud, *hadith* no. 2677, narrated by Sa'd ibn Abu Waqqas reads as : "On the day when Mecca was conquered, the Apostle of Allah (peace\_be\_upon\_him) gave protection to the People except four men and two women and he named them. Ibn AbuSarh was one of them. He then narrated the tradition. He said: Ibn AbuSarh hid himself with Uthman ibn Affan. When the Apostle of Allah (peace\_be\_upon\_him) called the people to take the oath of allegiance, he brought him and made him stand before the Apostle of Allah



This *hadith* must be based in Medina, after the revelations of the second Sura (*al-Baqarah*) and third Sura (*al-Imran*), thus once the Muslim state had already been established. Such an act of apostasy came from an individual who had previously held an immensely important connection with the Prophet. As he had been the scribe of the Qur'anic revelations, had then apostatised and spread vast derogatory comments upon the Prophet, accusing Him as being an imposter and suggesting that the Prophet knew nothing of what the ex-scribe, and now an apostate (*murtadd*), himself had written down for him - yet there was *still* no severe punishments by the Prophet in this case.

The only case of punishment for apostates mentioned in what are accepted as authentic *ahadith* is that of a party of 'Ukal and 'Urayna, who converted to Islam and moved to Madina. This case is commonly quoted, in this context, concerning this issue. It is a tale related to by Imam Abi Ja'far Muhammad b. Jarir al-Tabari in his work *Jami al-Bayan fi al-Tafsir al-Qur'an* and also by al-Suyuti in his work *Lubab al-Nuqul fi Asbab al-Nuzul*<sup>895</sup> which covers a report from Anas and another report from 'Abdur Razzaq who traces it from Abu Hurairah. The reports argue that the Surah *al-Ma'idah*, ayah 34-35, was revealed following the case of some people of the 'Ukal and 'Urayna who had embraced Islam, but had then become ill. They were told by the Prophet Mohammad to spend some time looking after a flock of the Prophet's camels with the other herdsmen, so they could relax and recover their illness, by drinking the milk and the urine of the camels. However, the group of men, once having recovered, became renegades, apostates (*murtaddun*), robbed and killed the herdsman and released the camels. They were caught, brought back to the Prophet and were believed to have been tortured and then executed as a punishment of *ridda* and as rebels against Allah and his Prophet (*muharibun*).

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(peace\_be\_upon\_him). He said: Apostle of Allah, receive the oath of allegiance from him. He raised his head and looked at him thrice, denying him every time. After the third time he received his oath. He then turned to his Companions and said: Is not there any intelligent man among you who would stand to this (man) when he saw me desisting from receiving the oath of allegiance, and kill him? They replied: We do not know, Apostle of Allah, what lies in your heart; did you not give us an hint with your eye? He said: It is not proper for a Prophet to have a treacherous eye." Found in the *ahadith* collection of Abu Da'ud in *e:\winhadis\winhadis.tex* on CD Rom *Islamica : Digital Library of Islamic Software*, ibid.

<sup>895</sup> Rahman, Shaikh Abdur, op. cit., p41-42 also see Imam Abi Ja'far Muhammad b. Jarir al-Tabari, *Jami al-Bayan fi al-Tafsir al-Qur'an*, Matbat'at al-Maimaniyyah, Egypt, (no date given), p223-224 and also al-Suyuti, *Lubab al-Nuqul fi Asbab al-Nuzul* and a translation of the Qur'an into Urdu by Maulana Ashraf 'Ali Thanwi, Matbat'ah Sa'idi, Kalam Company, Karachi, (no date given), p264 and Mohamed Selim El-Awa,



Samuel Zwemer cites from the original text of this *hadith*, as recorded by Al-Bukhari, in his *ahadith* collection *Sahih Al-Bukhari*, and refers to the 'Ukal and 'Urayna case<sup>896</sup> :

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op. cit., p51-52, Also see *The Encyclopaedia of Islam*, Volume IV, op. cit., p771. Also see Ahmad, Hazrat Mirza Tahir, *Murder in the Name of Allah*, 1989, op., cit., p34 and p79

<sup>896</sup> Zwemer, Samual, *The Law of Apostasy in Islam*, op.cit., p38. For the Arabic text, also see Al-Bukhari, Muhammad bin Isma'il bin Ibrahim bin Al-Mughira bin Bardizbah Al-Ju'fi, *Sahih Al-Bukhari*, 9 Volumes, Dar wa-Matabi' al-Sha'b, Cairo, no date given. Unfortunately Zwemer does not indicate either what Volume of *Sahih Al-Bukhari* or any page number for the location of this *hadith*. Also see An-Na'im, Abdullahi Ahmed, 1986, 'The Islamic Law of Apostasy and it's Modern Applicability,' op.cit, p.212.



وسلم نفر من عكل فاسلموا فاجتروا المدينة  
 فامرهم ان ياتوا السبل الصدقة فبشروا  
 من ابوالها فالبازن ففعلوا ففصحوا  
 فارثدوا وقلوا ابرعائنا وابتنا ففوا  
 فبعت في اثارهم فاني بهم فقطع ايديهم  
 وارجلهم وشمع اعينهم ثم لم يحسمهم  
 حتى ماتوا لم يحسم النبي  
 صلى الله عليه وسلم المحاربين من اهل  
 الردة حتى اهلكوا محمد بن الصلت  
 ابو يعلى حدثنا الوليد حدثنا الاوزاعي  
 عن يحيى عن ابي قلابة عن ابي هريرة عن  
 عنه ان النبي صلى الله عليه وسلم قطع  
 القرنيين ولم يحسمهم حتى ماتوا  
 لم يسبق المرتدون المحاربون  
 حتى ماتوا موسى بن اسماعيل  
 عن وهيب عن ابي بوب عن ابي قلابة  
 عن ابي هريرة عن ابي بوب عن ابي قلابة  
 عن النبي صلى الله عليه وسلم قال قد مرهفط  
 من عكل على النبي صلى الله عليه وسلم كانوا  
 في الصف فاجتروا المدينة فقالوا

FACSIMILE OF A MANUSCRIPT PAGE FROM AL BUKHARI : telling how Mohammed treated Apostates. (See page 38 .)

However, it was clear that the renegades in these circumstances were punished for *hiraba* (a *hudud* crime for armed robbery), for their acts of torture, dacoity and robbery -



as opposed to them having left the fold of Islam. It is argued that the accusation of the men being punished for 'apostasy' was simply an easy choice and 'apostasy' was the label given to cover the broad range of serious crimes that the men had perpetrated.<sup>897</sup>

Mohammad Selim El-Awa states that

it is universally agreed that this incident has noting [sic] to do with the punishment ordained in Islamic law for apostasy. Accordingly, nothing can be inferred from this report to help in determining the punishment for apostasy.<sup>898</sup>

Shaikh Abdur Rahman raises the interesting point that this incident is also related to, in some detail, within *Sahih al-Bukhari*, *Fath al-Bari*, '*Umdat al-Qari Sharh Sahih al-Bukhari* and *Ruh al-Ma'ani fi Tafsir al-Qur'an al-Azim wa'l-Sab' al-Mathani*,<sup>899</sup> which add to the importance of the *ahadith* and their own role in basing the sentencing for apostasy (*irtidad* – ارتداد and *ridda* – ردة) for the guilty apostate (*murtadd* – مرتد).

Muhammad 'Ali also points out that in some other *hadith* relating to this case, it is reported that the convicted murderers were tortured to death. He mentioned that if this had occurred, it was due to existing traditional retaliation, before the revelation of the penal laws of Islam were sent. Some reports, including that from Badr al-Din Mahmud ibn Ahmad, Al-'Aim, Hanafi, in '*Umdat al-Qari*, claim that the party of 'Ukal gorged out the eyes of the camel herdsman and then threw him on hot stones so they died a slow

<sup>897</sup> Rahman, Shaikh Abdur, op.cit., p41-42 also see Mohamed Selim El-Awa, Ibid., p51-52. Also see An-Na'im, Abdullahi Ahmed, 'The Islamic Law of Apostasy and it's Modern,' op.cit., p.204. Also see Ayoub, Mahmoud, 1994 'Religious Freedom and the Law of Apostasy in Islam' in *Islamochristiana*, 20, p87.

<sup>898</sup> Mohamed Selim El-Awa, Ibid., p51-52. Also see O'Sullivan, Declan, '*Al-Hudud : الحدود* : Definition of Crimes and Punishments stated within the Qur'an and Sunna - Focusing on 'Apostasy' [*Ridda wa irtidad* : ردة و ارتداد] as a *Hadd* : حد, op.cit, p64

<sup>899</sup> Rahman, Shaikh Abdur, op. cit., p41-42 also see Na'ib Naqwi and Mohammad 'Ali, *Sahih al-Bukhari*, translated Arabic to Urdu, Sh. Ghulam Alki and Sons, Lahore, 1963, Vol. III, pp555-556 and also Abu'l-Fadl Shihab al-Din Ahmad b. Ali b. Muhammad b. Hajar al-'Asqalani, *Fath al-Bari*, al-Matba'at al-Bihyyat al-Misriyyah, 1378H, Vol. XI, p91-92 and Badr al-Din Abi Muhammad Mahmud b. Ahmad al-'Aini al-Hanafi, '*Umdat al-Qari Sharh Sahih al-Bukhari*, Dar al-Taba'at al-'Amirah, Egypt, (no date given), Vol. XI, p143 and Abi'l-Fadl Shihab al-Din, al-Sayyid Mahmud-al-Alusi al-Baghdadi, *Ruh al-Ma'ani fi Tafsir al-Qur'an al-Azim wa'l-Sab' al-Mathani*, Idarat al-Taba'at al-Muniriyyah, Egypt, (no date given), Vol. VI, pp118-122



death, thus the 'Ukl themselves were executed in a similar treatment.<sup>900</sup> However, he also states that other sources deny that the law of retaliation was applied in this case. These reports, including one by al-Imam Abu Ja'far Muhammad ibn Jarir Tabari, in his work *Jami al-Bayan fi Tafsir al-Qur'an*, argue that the Prophet intended to put them to death by torture in the same fashion as their crime on the camel keeper, but before the execution took place the revelation of 5:33 was delivered :

إِنَّمَا جَزَاءُ الَّذِينَ يُحَارِبُونَ اللَّهَ وَرَسُولَهُ وَيَسْعَوْنَ فِي الْأَرْضِ  
فَسَادًا أَنْ يُقَتَّلُوا أَوْ يُصَلَّبُوا أَوْ تُقَطَّعَ أَيْدِيهِمْ وَأَرْجُلُهُمْ مِنْ خَلْفٍ أَوْ  
يُنْفَوْا مِنَ الْأَرْضِ ذَلِكَ لَهُمْ خِزْيٌ فِي الدُّنْيَا وَلَهُمْ فِي الْآخِرَةِ عَذَابٌ  
عَظِيمٌ

The punishment of those who wage war against Allah and his (*sic*) Apostle and strive to make mischief in the land is only this, that they should be killed or crucified or their hands and their feet should be cut off on opposite sides or they to be imprisoned. (Qur'an 5:33)<sup>901</sup>

The apostates in this case are spoken of as clearly waging war and aggression against God and His Apostle. The punishments vary, according to the nature of the crime committed. Death through crucifixion would be where the accused has caused terror in the land, but for any minor offence, the punishment would only be imprisonment. This *hadith* overtly expresses that the death sentence was induced, not due to apostasy, but clearly because they had killed the camel keepers and had stolen the camels and belongings, thus it would be considered as an act of *hiraba* – حُرَابَة (dacoity/highway robber).

<sup>900</sup> 'Ali, Muhammad, *Religion of Islam*, op. cit., see footnote 1, p595, 'Ali also cites Badr al-Din Mahmud ibn Ahmad, Al-'Aim, Hanafi, 'Umdat al-Qari, no date given, al-Amira Press, Cairo, Vol.VII, p58

<sup>901</sup> 'Ali, Muhammad *The Religion of Islam*, Ibid., see footnote 1, p595-596, 'Ali also cites Tabari, al-Imam Abu Ja'far Muhammad ibn Jarir, *Jami al-Bayan fi Tafsir al-Qur'an*, no date given, al-Maimana Press, Cairo, Vol. VI, p121. Also, for the Arabic script, see Tahir-ul-Qadri, Muhammad, *Islamic Penal System and Philosophy*, op. cit., p389



Assessing *fiqh* sentencing, 'Ali suggests that jurists base their principles on factors which is opposed to the Qur'an. As clarified in *Hidaya*, the legal position is represented as "The *murtadd* – مرتد (apostate) shall have Islam presented to him whether he is a free man or a slave; if he refuses, he must be killed."<sup>902</sup> Within *Hidaya*, this point seems to be immediately contradicted in the definition of an apostate as "an unbeliever at war (*kafir-un harabiyy-un*) whom the invitation to Islam has already reached."<sup>903</sup> 'Ali confirms the assumption that even within *fiqh* an apostate has received such a punishment because of aggression and fighting in a state of war against Islam. A fascinating point is raised in *Hidaya*, which a commentator mentions as a further explanation : "The killing for apostasy is obligatory in order to prevent the mischief of war and it is not a punishment for an act of unbelief" due to the fact that "for mere unbelief does not legalise the killing of a man."<sup>904</sup>

'Ali raises a stimulating point where he sees misconceptions between the definitions of apostasy, (*ridda* – ردة / *irtidad* – ارتداد) which contrast against those individuals and/or groups who are accused as being a *murtadd* - apostates / *murtaddun* – apostates). He feels that most accusations contradict the very message of the Qur'an and offers confusion in the very definitions themselves. He explains that, if an apostate is killed due to a deliberate act of *hirab* – as opposed to any unbelief – and it is stated plainly within *al-fiqh* that killing for unbelief is against the principles of Islam - then there is a vast misconception on assuming that simply having the mere ability, thus a potential to fight, is enough for a positive accusation of apostasy. He argues that, in this case, even a small boy could be labeled as a *harabiyy* (one at war) as he will grow to be an adult man and be strong enough to fight. Even, in this position, women apostates cannot be exempt from the death penalty, because they also possess the potentiality to fight. He argues that Islamic laws of punishment are based on facts, not potentialities. If *fiqh* recognises the fact that the death sentence cannot be applied on an individual due to just a simple change in religion, but that they must be in a state of war against Islam and believers, then the definitions are clear and cannot be easily misconceived. He makes the interesting

<sup>902</sup> 'Ali, Muhammad *The Religion of Islam*, Ibid., p598, Also see *Hidaya*, Vol. I, p576

<sup>903</sup> 'Ali, Muhammad Ibid., p598, also see *Hidaya*, Vol. I, p577



suggestion that "It is quite a different matter that the legists should have made a mistake in defining *hirab* or a state of war."<sup>905</sup>

### 3.4.1 The *hadith* : من بدل دينه فاقتلوه – 'Kill whoever changes his religion.'

Much stress is placed on the *hadith* reported by Muhammad bin Isma'il bin Ibrahim bin Al-Mughira bin Bardizbah Al-Ju'fi Al-Bukhari to have been narrated by Abdullah ibn Abbas, which is short and clear in its statement related to the instruction from the Prophet Mohammad to have said : من بدل دينه فاقتلوه – "Whoever changes his Islamic religion, kill him."<sup>906</sup> This *hadith* is also reported by Malik bin Anas bin Malik bin Abu 'Aamir al-Asbahi Malik in his work *Kitab al-Muwatta'* to have been narrated by Zayd ibn Aslam as "The Messenger of Allah, may Allah bless him and grant him peace, said, "If someone changes his *din*, (Islamic belief/religion) strike his neck!"<sup>907</sup> Samuel Zwemer, in his work *The Law of Apostasy in Islam*, cites the full version of the *hadith*, as held by Al-Bukhari, narrated by 'Ikrima. In this Tradition, Ibn 'Abbas presents his support of the death sentence for apostates, but restricts the manner in which the penalty should be delivered :

Narrated 'Ikrima : Some *Zanadiqa* (atheists) were brought to 'Ali and he burnt them. The news of this event, reached Ibn 'Abbas who said, 'If I had been in his place, I would not have burnt them, as Allah's Apostle forbade it, saying, 'Do not punish anybody with Allah's punishment (fire).' I would have killed them according to the statement of Allah's Apostle, 'Whoever changed his Islamic religion, then kill him.'<sup>908</sup>

<sup>904</sup> Ali, Muhammad Ibid., p598-599, also see *Hidaya*, Vol. I, p577

<sup>905</sup> Ali, Muhammad Ibid., p599. Also see O'Sullivan, Declan, '*Al-Hudud : الحدود* : Definition of Crimes and Punishments stated within the Qur'an and Sunna, op.cit, p67

<sup>906</sup> Khan, Muhammad Muhsin, *The Translation of the Meanings of Sahih Al-Bukhari*, Arabic-English, Volume IX, Kazi Publications, Lahore, Pakistan, 1979, Vol.9 hadith number 57, p45 Also see see al-Bukhari, Vol. 9, hadith 57 from e:\islamica\winhadis\winhadis.tex and e:\islamica\bukhari\bukhari.tex on the CDRom *islamica : Digital Library of Islamic Software*, op. cit.

<sup>907</sup> Malik bin Anas bin Malik bin Abu 'Aamir al-Asbahi Malik, *Kitab al-Muwatta'*, edited by M. F. Abd al-Baqi, Cairo, 1951, also see *Muwatta Malik*, hadith number 36.18.15 from e:\islamica\winhadis\winhadis.tex on the CDRom *islamica : Digital Library of Islamic Software*, Ibid. and also Safwat, Safia F., 'Offences and Penalties in Islamic Law,' in *The Islamic Quarterly*, op. cit., p168

<sup>908</sup> Khan, Muhammad Muhsin, *The Translation of the Meanings of Sahih Al-Bukhari*, op.cit, Vol.9 hadith number 57, p45 and Vol. 4, hadith 260. Also see Zwemer, Samuel M., *The Law of Apostasy in Islam*, op.cit., p38.



Muhammad 'Ali argues that Al-Bukhari has indicated that apostates are to be killed only when they are aggressively fighting against Allah, Islam, the faithful Muslims and the Prophet. 'Ali suggests that this *hadith* only aims towards those who join the enemies of Islam in a stage of active war. He states that there is a necessity to confine the definition of which specific apostates this *hadith* refers to, for it to be reconciled with other hadith and the message of the Qur'an. He raises the point that one limited definition is essential to allow the *hadith* to have any meaning, otherwise it would refer to *any* change of faith, which broadens its understanding too far. Thus, in the latter context, even a non-Muslim who becomes a Muslim or a Jew who becomes a Christian, or a Hindu who becomes a Buddhist must be killed. There is no substantive evidence which ascribes such punishment to the Prophet himself, which means the *hadith* cannot be accepted unless logical limitations are applied to it.<sup>909</sup>

This point is emphasised by Hazrat Mirza Tahir Ahmad in his work *Murder in the Name of Allah*. He argues that :

In the light of the general nature of the language used, how can one restrict the application of this tradition to a Muslim who renounces his faith? In strict legal terms, according to this tradition, anyone who changes his religion, whatever that religion is, would have to be put to death. It would mean slaying the Jew who became a Christian, slaying the Christian who became a Muslim and slaying the pagan who adopted any new faith. 'Whosoever' also transcends the geographical boundaries of Muslim states, implying that anywhere in the world, anyone who changes his faith – be he an aborigine of Australia, a pygmy of Africa or an Indian of South America – must be slain forthwith the moment he renounces his previous faith and accepts another one. Islam lays a great deal of emphasis on proselytising, so that it is binding upon every Muslim to become a preacher in the path of Allah. How ironical it is therefore that many renowned Muslim scholars today negate the very spirit of Islamic *jihad* by audaciously sticking to the narrow-minded view that Islam dictates that whosoever changes his faith, meaning in this context Islam,

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<sup>909</sup> 'Ali, Mohammad, *The Religion of Islam*, op. cit., p596, also see El-Awa, op. cit. p53 also see Kamali, Mohammad Hashim, op cit., p95 and also Tahir-ul-Qadri, Muhammad, *Islamic Penal System and Philosophy*, op. cit., p387-388



must be put to death forthwith. What about other faiths? Islam declares it to be an obligation upon Muslims to stand committed to the noble goal of constantly endeavouring to change the faith of all non-Muslims around them by peaceful means. This task is so important and demanding that every Muslim is instructed to stick to the endeavour till his last breath. The Holy Qur'an states :

Call unto the way of thy Lord with wisdom and goodly exhortation, and reason with them on the basis of that which is best. Thy Lord knows best those who have strayed away from His way; and He knows best those who are rightly guided. (16:126)

The advocates of the bigoted inhumane doctrine of death upon apostasy never visualise its effect on international and inter-religious human relationships. Why can they not see that according to their view of Islam, adherents of all religions have a fundamental right to change their faith but not so the Muslims, and that Islam has the prerogative of converting others but all adherents of different faiths are deprived of any right to convert Muslims to their faith? What a sorry picture of Islamic justice this presents!<sup>910</sup>

Mohammad Selim El-Awa mentions that generally speaking, most *madhhab* agree on the limitation consideration. All the schools of *fiqh* – with the exception of Zahiri and some Shafi'i jurists – accept the rule that a non-Muslim who moves from their original religion to another, they are not to be harmed, whereas when a Muslim apostatises from Islam to join another one, the punishment is death unless they repent and return to the faithful.<sup>911</sup>

Shaikh Abdur Rahman traces the chain of transmission of the *hadith* proclaiming *من بدل دينه فاقتلوه* - 'kill them whoever changes his religion.' It is seen to be a solitary *hadith* (*ahad*) and Abdur Rahman argues that this makes it weak in its

<sup>910</sup> Ahmad, Hazrat Mirza Tahir, *Murder in the Name of Allah*, translated by Syed Barakat Ahmad, 1989, Lutterworth Press, Cambridge, UK. (This is a translation of Ahmad, Hazrat Mirza Tahir, *Mazhab ke Nam per Khoon (Bloodshed in the Name of Religion)*, published in the late 1950's), p91-92

<sup>911</sup> El-Awa, Ibid., p53, El-Awa also cited Shawkani, *Nayl al-Awtar*, op.cit., Vol.VII, p193 and also cited Baji, Sulayman b. Khalaf b. Sa'd, no date given, *Al-Muntaqa Sharh al-Muwatta'*, Cairo, Vol. V, p281 and also cited Malik, Ibn Anas al-Asbahi, 1951, *Kitab al-Muwatta'* edited by M.F. 'Abd al-Baqi, Cairo



transmission (*isnad*).<sup>912</sup> This weakness is also defended by Abdur Rahman's argument that neither the Prophet nor his Companions ever compelled anyone to accept Islam or sentence anyone to death simply due to their renunciation of their faith.<sup>913</sup>

Mohammad Hashim Kamali expands this position by suggesting that it is therefore not surprising to read the work of several prominent *ulama* throughout hundreds of years which subscribe to the opinion that the act of apostasy alone is not eligible as a punishable offence. He gives the examples of Ibrahim al-Nakha'i (d. 95/713) who was a leading jurist and Traditionalist among the generation succeeding the Companions, together with Sufyan al-Thawri (d. 161/772) who has the respectful title of the prince of the believers concerning *hadith* (*amir al-mu'minin fi'l-hadith*) and wrote two very important compilations of *hadith* :- *al-Jami' al-kabir* and *al-Jami' al-Saghir* - both of which state that an apostate should be re-invited to Islam and should never be condemned to death. Ahmad 'Abd al-Halim b. Majd al-Din Ibn Taymiyya also mentions that both al-Nakha'i and al-Thawri emphasize the view that the invitation to Islam should continue in a limitless fashion, for as long as it would take to have the apostate change their own mind and repent.<sup>914</sup>

The respected Hanafi jurist, Shams al-Din Mohammad al-Sarakhsi also expresses that apostasy does not qualify for ephemeral punishment. He raises the point that apostasy is not an offence prescribed with a *hadd* punishment, as the punishment can - and will - be suspended if the apostate repents, thus :-

The prescribed penalties (*hudud*) are generally not suspended because repentance, especially when they are reported and become known to the head of state (*Imam*). The punishment of highway robbery, for instance, is not suspended because of repentance; it is suspended only by return of the property to the owner prior to arrest.....Renunciation of the faith and conversion to

<sup>912</sup> Rahman, Shaikh Abdur, *Punishment of Apostasy in Islam*, op. cit., p63-64 also see Kamali, Mohammad Hashim, Ibid., p93

<sup>913</sup> Rahman, Shaikh Abdur, Ibid., p63-64 also see Kamali, Mohammad Hashim, Ibid., p93

<sup>914</sup> Kamali, Mohammad Hashim, Ibid., p93 Kamali also cites Ibn Taymiyya, Taqi al-Din, 1398/1978, *al-Sarim al-Maslul 'ala Shatim al-Rasul*, edited by Mohammad Muhyi'l-Din 'Abd al-Hamid, Beirut, Dar al-Kitab, p321 Kamali also cited Al-Shawkani, Yaha b. 'Ali, *Nayl al-Awtar : Shar Muntaga'l-Akhbar*, Cairo, Mustafa al-Babi al-Halabi, no date given, Vol. VII, p230



disbelief is admittedly the greatest of the offences, yet it is a matter between man and his Creator and its punishment is postponed to the day of judgement (*fa'l-jaza' 'alayha mu'akhkhar ila dar al-jaza'*). Punishments that are enforced in this life are those which protect the peoples interests, such as retaliation, which is designed to protect life.....<sup>915</sup>

Kamali quotes from the work of the Maliki jurist Sulayman b. Khalaf b. Sa'd Baji (d. 494AH), who described apostasy as a sin which carries no prescribed penalty (*hadd*) and therefore, such a sin may only be punished under the discretionary punishment of *ta'zir* – تعزير.<sup>916</sup> The renowned Hanbali jurist Taqi al-Din Ibn Taymiyya categorically agrees on this issue in his work *al-Siyasah al-Shar'iyyah fi Islah al-Ra'i wa'l-Ra'iyyah*.<sup>917</sup>

This point is also highlighted by Mohammad Selim El-Awa who quotes from Baji's commentary of *Al-Muwatta'*, where Baji claims that apostasy is "a sin which requires no *hadd* punishment."<sup>918</sup> Relevant commentaries from modern scholars, particularly by 'Abd al-Hakim Hasan al-'Ili and Isma'il al-Badawi, defend this position by arguing that around the time of Ibrahim al-Nakha'i and Sufyan al-Thawri, Islam had already firmly established itself and was a very secure environment, beyond the fear of any hostility from disbelievers or apostates. They argue here that al-Nakha'i understood the *hadith* 'kill them whoever changes his religion,' which states death as the punishment for apostasy, has more emphasis as a political tool, directed at the obstinate enemies of Islam.<sup>919</sup>

<sup>915</sup> Kamali, Mohammad Hashim, Ibid., p94 Kamali also cites al-Sarakhsi, Shams al-Din Mohammad, *al-Mubasut*, Cairo, Matba'at al-Sa'adah, 1324AH and also quoted as published in Beirut, Dar al-Ma'rifah, 1406/1986, Vol. X, p110

<sup>916</sup> Kamali, Mohammad Hashim, Ibid., p94 Kamali also cites comments on Baji by Al-Sha'rani, 'Abd al-Wahhab, *kitab al-Mizan*, op. cit., Vol. II, p134 and cites Ibn Taymiyya, Taqi al-Din, 1398/1978, *al-Sarim al-Maslul 'ala Shatim al-Rasul*, op. cit., p318

<sup>917</sup> Kamali, Mohammad Hashim, Ibid., p94 Kamali also cites Ibn Taymiyya, Taqi al-Din, 1954, *al-Siyasah al-Shar'iyyah fi Islah al-Ra'i wa'l-Ra'iyyah*, 2<sup>nd</sup> edition, Cairo, Dar al-kitab al-Arabi, p124

<sup>918</sup> El-Awa, Mohamed Selim, op. cit., p55 El-Awa also cites Baji, Sulayman b. Khalaf b. Sa'd, *Al-Muntaqa Sharh Al-Muwatta'*, Cairo, no date given, Vol.V, p282

<sup>919</sup> Kamali, Mohammad Hashim, Ibid., p94 Kamali also cites Al-'Ili, 'Abd al-Hakim Hasan, 1403/1983, *al-Hurriyyah al-'Ammah*, Cairo, Dar al-Fikr, p426 and Al-Badawi, Isma'il, 1400/1980, *Da'a'im al Hukm fi'l-Shari'ah al-Islamiyyah wa'l-Nuzum al-Dusturiyyah al-Mu'asarah*, Cairo, Dar al-Fikr al-'Arabi, p166



Supporting the position of al-Sarakhsi, that apostasy does not qualify for any temporal punishment, both Mohammad Hashim Kamali and also 'Abd al-Razzaq Nu'man al-Samara'i, in his work *Akham al-Murtadd fi'l-Shari'ah al-Islamiyyah*, cite Mahmud Shaltut's analysis of relevant Qur'anic evidence. Shaltut concludes that the Qur'an refers to any punishment of this act will only occur in the Hereafter :

As for the death penalty for apostasy, the jurists have relied on the Hadith [sic] reported by Ibn 'Abbas in which the Prophet has said 'Kill the one who changes his religion' (*man baddala dinahu faqtuluhu*). This Hadith has evoked various responses from the 'ulama, many of whom are in agreement that the punishment that the prescribed penalties (*hudud*) cannot be established by solitary Hadith (*ahad*), and that unbelief by itself does not call for the death penalty. The key factor which determines the application of this punishment is aggression and hostility against the believers and the [need to] prevent possible sedition (*fitnah*) against religion and the state. This conclusion is sustained by the manifest meaning of many of the passages in the Qur'an which proscribe compulsion in religion."<sup>920</sup>

Subhi Mahmassani refers to the death penalty as meaning to be valid not for the simple act of an individual leaving the community of Islam but when the act of apostasy was linked together with a political betrayal against the leaders. He argues that the Prophet never killed anybody solely on their act of leaving the faith, but when they also undertook severe acts, related to their leaving, such as treason, sedition and joining the opposition forces to engage in military and hostile attacks.<sup>921</sup>

A very relevant and interesting point is raised here by Muhammad 'Ali, who explains that due to either an almost deliberate misinterpretation or, at least, due to a misunderstanding of the principles of Islam and the message of the Qur'an, there is one main reason why the death penalty has been translated unequivocally, by Western, non-Muslim scholars, such as Samuel Zwemer in his work *The Law of Apostasy in Islam* :

<sup>920</sup> Al-Samara'i, 'Abd al-Razzaq Nu'man, 1968, *Akham al-Murtadd fi'l-Shari'ah al-Islamiyyah*, op. cit., p114 also see Kamali, Mohammad Hashim, ibid., p94-95, Kamali also cites Shaltut, Mahmud, no date given, *al-Islam 'Aqidah wa-Shari'ah*, Kuwait, Matabi' Dar al-Qalam, p292-293

<sup>921</sup> Kamali, Mohammad Hashim, ibid., p95, Kamali also cites Mahmassani, Subhi, 1979, *Arkan Huquq al-Insan fi'l-Islam*, Beirut, Dar al-'Ilm li'l-Malayin, p123-124



In their zeal to find the death sentence for apostates in the Holy Qur'an, some Christian writers have not hesitated to give an entirely wrong translation of the word *fa-yamut* (*then he dies*) as meaning *then he is put to death*. *fa-yamut* is the active voice and *yamutu* means *he dies*. The use of this word shows clearly that apostates were not put to death. Some interpreters have drawn a wrong inference from the words "whose works shall go for nothing." These words do not mean that he shall be treated as outlaw. By his "works" are meant the good deeds which he did when he was a Muslim and these in fact go for nothing even in this life, when a man afterwards adopts unbelief and evil courses. Good works are only useful if they continue to lead a man on to better things and develop in him the consciousness of a higher life.<sup>922</sup>

'Ali's conclusion here is that the *murtadd* (مرتد) will be punished in the Hereafter, having reverted to evil, unworthy deeds, thus any good deeds he had done as an unbeliever become meaningless, due to denial of faith. A sufficient conclusion is raised by Wael Hallaq, who proclaims that that:

The foregoing discussion of the Qur'an makes it clear that nothing in the law governing apostates and apostasy derives from the letter of the holy text.<sup>923</sup>

Ahmad Syed Barakat, in his article *Conversion From Islam*, has assessed the *hadith*, and the entire history of Islam, concluding that :

An attempt to comb thirteen hundred years of Islamic history to find the number of Muslims who were put to death because of their conversion from Islam would prove futile. There were unsuccessful attempts to execute Maimonides in Cairo, the Maronite emir Yunus in Lebanon, or to persecute Rashid al-Din in Tabriz, but such instances are very rare.....Al-Husayn ibn Mansur al-Hallaj was executed in 309/922 for blasphemy, because he

<sup>922</sup> 'Ali, Muhammad, *Religion of Islam*, op. cit., see footnote 1, p592-593, also see Ali, Maulvi Mohammad, 1920, *The Holy Qur'an : Containing the Arabic Text With English Translation and Commentary*, Ahmadiyya Anjuman-I-Ishaat-I-Islam, Lahore, India, in footnote 279, p98-99

<sup>923</sup> Hallaq, Wael, 'Apostasy' in *Encyclopaedia of the Qur'an*, edited by Jane Dammen McAuliffe, Volume One, 'A-D,' Brill, Leiden, Netherlands, 2001, p122



claimed to have achieved *hulul* (substantial union with God).<sup>924</sup>

He continues his list of the historic events that lead to the convicted perpetrator's death penalty, based on the accusation label of 'apostasy,' which leads up to the execution in January 1985 of Mahmoud Muhammad Taha in the Sudan, because he was convicted under the accusation that "he considered that the Medinan part of the Qur'anic legislation was no longer applicable."<sup>925</sup> The case study of Mahmoud Muhammad Taha is covered in the Case Study Chapters of this thesis.

Following this list of case-assessment, and the reasons behind why Islamic jurists and theologians defend the sources they quote to promote the death penalty as being legitimate, Ahmad Syed Barakat declares that:

The death penalty for conversion from Islam to another religion, sanctioned neither by the Qur'an nor by the Sunna, was retained, but not because it had a practical value. It was more a symbol of dominance than an instrument for preventing a Muslim from converting to the faith of his choice. It was a scarecrow in the desert.<sup>926</sup>

Promoting the negative side of the story, Samuel Zwemer cites two other documents which portrays the death penalty as being the unquestionable principle on the punishments to be imposed on those who undertake the acts of blasphemy and/or apostasy in Islam. Here, for an example, he cites from the work of Abi Abdullah Mohammad Al-Quraishi (1450AD), entitled *Hujjat-al-umma fi Ikhtilaf-al-'Ima*, which portrays the death penalty for apostates and where he describes the manner of this punishment for those convicted of 'apostasy.' This is a facsimile of a manuscript from the

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<sup>924</sup> Syed Barakat, Ahmad, 'Conversion From Islam,' op.cit., p15

<sup>925</sup> Syed Barakat, Ahmad, ibid., p16. For a detailed analysis of the circumstances that led to the trial, and the assessment of the *Shari'a* legal system in the Sudan under Ja'far Nimeiri, which led to the conviction of 'apostasy' and the execution in 1985, see O'Sullivan, Declan, 'The Death Sentence for Mahmoud Muhammad Taha : Misuse of the Sudanese Legal System and Islamic *Shari'a* ?', *The International Journal of Human Rights*, Frank Cass Publishers, Vol., 5, No.3, Autumn 2001, p45-70 and Sidahmed, Abdel Salam, 'Freedom of Religion, Apostasy and Human Rights : An Appraisal,' in *The Mediterranean Journal of Human Rights*, Faculty of Laws, University of Malta, Msida, Malta, Vol. 4, (Double Issue), 2000, p125-144

<sup>926</sup> Syed Barakat, Ahmad, ibid., p16



book, cited by Samual Zwemer, although he provided no translation of the text to explain it in more detail.<sup>927</sup>



He presents another very interesting facsimile from *Sahih Muslim*, the collection of *ahadith* by Abu'l Husain Muslim bin Al-Hajjaj Muslim, which is a tale that describes how the Prophet Muhammad tortured those convicted of 'apostasy' in the earlier days of the Islamic community, before it had become established. Again, Zwemer presents no translation of the text's content, so that the acts of the perpetrators can not be established to know if they had committed any other crimes simultaneously, which happened to be unrelated to apostasy and/or blasphemy, such as treason or, as in the case of the 'Ukl case, the robbery and murder. The Arabic text reads as<sup>928</sup>:

<sup>927</sup> Zwemer, Samual, *The Law of Apostasy in Islam*, op.cit., p49.

<sup>928</sup> Zwemer, Samual, *The Law of Apostasy in Islam*, op.cit., p64. Also see Muslim, Abu'l Husain Muslim bin Al-Hajjaj Al-Qushairi An-Nishapuri, *Sahih Muslim*, 5 Volumes, edited by Muhammad Fu'ad 'Abd al-Baqi, al-Halabi, Cairo, 1955, Vol.2, p34



ذو در رسول الله صلى الله عليه وسلم فبلغ ذلك النبي صلى الله عليه وسلم فبعث في أثرهم  
فأتى بهم ففدع أيديهم وأرجلهم وسمل أعينهم وتركهم في الحرة حتى ماتوا وحده شنا  
أبو جعفر محمد بن الصباح وأبو بكر بن أبي شيبه واللفظ لاني بكر قال ثنا ابن علية  
عن حجاج بن أبي عثمان ثني أبو رجاء مولى أبي قلابة عن أبي قلابة ثني أنس  
أن نفر من عكل ثمانية قدموا على رسول الله صلى الله عليه وسلم فبايعوه على  
الاسلام فاستوخوا الارض وسقمت أجسامهم فشكوا ذلك الى رسول الله  
صلى الله عليه وسلم فقال ألا تخرجون مع راعيتنا في ابلة فتصيبون من أبوالها وألبانها  
فقالوا بلى فخرجوا فذبحوا من أبوالها وألبانها فصحوا فقتلوا الراعي وطرردوا  
الابل فبلغ ذلك رسول الله صلى الله عليه وسلم فبعث في آثارهم فأدركوا فجئى بهم  
فأمرهم فقطعت أيديهم وأرجلهم وسمل أعينهم ثم كبندوا في الشمس حتى ماتوا  
وقال ابن الصباح في روايته وأطرردوا النعم وقال وسمرت أعينهم وحده شنا هرون  
ابن عبد الله قال ثنا سليمان بن حرب قال ثنا حماد بن زيد عن أيوب عن أبي رجاء  
مولى أبي قلابة قال قال أبو قلابة ثنا أنس بن مالك قال قدم على رسول الله صلى  
الله عليه وسلم قوم من عكل أو عرينة فاجتروا المدينة فأمرهم رسول الله صلى الله  
عليه وسلم بلباقح وأمرهم أن يشربوا من أبوالها وألبانها يعني حديث حجاج بن  
أبي عثمان قال وسمرت أعينهم والقوا في الحرة يستقون فلا يسقون وحده شنا  
محمد بن مثنى قال ثنا معاذ بن معاذ ح وثنا أحمد بن عثمان التوفلي ثنا أزهري  
السمان قال ثنا ابن عون ثنا أبو رجاء مولى أبي قلابة عن أبي قلابة قال كنت  
جالسا خلف عمر بن عبد العزيز فقال للناس ماتقولون في القسامة فقال عنبسة قد  
ثنا أنس بن مالك كذا وكذا فقلت إياي حدث أنس فقدم على النبي صلى الله عليه  
وسلم قوم وساق الحديث بنحو حديث أيوب وحجاج قال أبو قلابة فلما فرغت قال  
عنبسة سبحان الله قال أبو قلابة فقلت أنتهني يا عنبسة قال لا هكذا حدثنا أنس  
ابن مالك لن تزالوا بخير يا أهل الشام ما دام فيكم هذا أو مثل هذا وحده شنا  
الحسن بن أبي شعيب الخرائي ثنا مسكين وهو ابن بكير الخرائي أخبرنا الأوزاعي  
ح وثنا عبد الله بن عبد الرحمن الدارمي أخبرنا محمد بن يوسف عن الأوزاعي  
عن يحيى بن أبي كثير عن أبي قلابة عن أنس بن مالك قال قدم على رسول الله صلى  
الله عليه وسلم ثمانية نفر من عكل بنحو حديثهم وزاد في الحديث ولم يحسمهم

FACSIMILE OF THE TEXT IN THE STANDARD COLLECTION OF  
TRADITIONS BY MUSLIM; telling how Mohammed tortured the  
earliest Apostates.

This is Page Thirty-four from Volume Two, Chapter on the Apostate:  
Muslim, Cairo Edition.

To accept that these *ahadith* certainly exist is essential, but it is also necessary to acknowledge that they often include various different crimes, that are categorised under different legal sentencing than the peripheral crime of apostasy that also would have occurred in any given case, in this context. It is also wise to be aware that each *hadith* has very different interpretations. As Ahmad Syed Barakat suggests :

The law prohibiting conversion from Islam to other religions is not only against the express teachings of the



Qur'an and in direct contravention of the Prophet's sunna, but it is also unnecessary.....(as) in the case study of Bengal, there were no conversions among the Muslims under two centuries of British rule. North Africa under French rule and Indonesia under Dutch crown, present the same picture.

Threatened by foreign aggression and internal strife, the medieval jurist found in 'the Book and the sunna' his own fears and the remedies which he could devise within his own limited perspective. Anyone who seemed to endanger the *status quo* was an infidel, and any *hadith*, irrespective of its authority and context, became his argument. 'And ultimately these accretions of juristic interpretation has all come to be artificially expressed, particularly through the growth of Traditions, as manifestations of the divine command.'<sup>929</sup>

The concept of blasphemy within the Qur'an is held as the opposition (*muhadadah* or *mushaqaqah*) to insult (*adha*) God and the Prophet, which comes as a close resemblance as high treason. The prominent political relevance of these offences, during the early days of Islamic establishment, can be identified in the hostile reaction to it, which led to the Prophet to be involved in some eighty-five battles, following his migration to Medina and becoming the head of state.<sup>930</sup> Kamali puts forward the argument that it is now essential to form a distinct separation between the political and religious content of blasphemy. This is based on the fact that there was a predominant political basis of this offence during the early days of Islam – and thus, moreso, that it is now no longer a specifically political offence in contemporary times. Blasphemy was seen then as a strong threat to the continuance of Islam, as it was a 'new faith,' and the newly established state had no firm basis to defend itself from the constant hostility thrust upon it.<sup>931</sup>

Making comments on the assessment of the apostasy cases at that time, and concluding them to be a political offence, 'Abd al-Hakim Hasan al-'Ili analysed the cases and promoted the corollary that the Prophet had permitted the death sentence for apostasy

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<sup>929</sup> Syed Barakat, Ahmad, *ibid.*, p22-23. Also, for the quote provided at the end, see Coulson, N. J., *A History of Islamic Law*, Edinburgh, 1969, p151

<sup>930</sup> Kamali, Mohammad Hashim, *op.cit.*, p247-248.

<sup>931</sup> *Ibid.*, p248



under his authority as the political leader at that time. He also had the capacity of discretionary decisions of judgement, so “as such, the Prophet himself has treated apostasy as a *ta'zir* (تعزير) offence.”<sup>932</sup> It is recorded as evidence that the Prophet exempted several people from the death sentence, who had not just renounced Islam but had also vilified and insulted him. Kamali mentions that throughout this assessment, the word ‘apostasy’ is used synonymously with ‘blasphemy’ as most, if not all, of the cases that involved apostasy were interwoven with blasphemous attacks upon Islam or the Prophet. This was such a common occurrence that the two offences became indistinguishable.

Although the crimes committed were politically rebellious, they were also simultaneously inclined towards having a religious emphasis. Islam had no separation between religion and politics, or religious and civil authority, in the very early stages of the Islamic state. However, Kamali argues that the things that have changed throughout history include the distinction between the crimes that are categorised of having a religious, and those of a having a political nature. This has been both recognised and has been widely in practice. The political crime of treason has been treated in a different manner as to that of blasphemy. The obvious weight held against treason has much more significance than that held against blasphemy. This can be due to the more modernised structure of the state, compared to the first state that was established in Medina. Kamali succinctly explains this change in time :

Whereas the state in Medina under the leadership of the Prophet and the Rightly-Guided Caliphs, was clearly committed to, and rooted in, the ideology and religious law of Islam, and political loyalty was measured by these criteria, this is no longer the case with the nation-state today.<sup>933</sup>

Due to this, the whole consideration of the crimes of apostasy and blasphemy has changed, as they presently do not relate, in any definitive way, to a political motive. If this is the case, it would be more logical to re-consider the penalties and punishments

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<sup>932</sup> Ibid., p248

<sup>933</sup> Ibid., p249



related to the change of the crime's basis. Kamali suggests that, as blasphemy is no longer to be seen as a political crime on the same level of subversive treason, it is no longer appropriate to treat it in the same manner that it was dealt with, historically, in Medina.

However, blasphemy is still a very dangerous offence, by openly inciting violence and the loss of life, through the chaos it creates. It seems to "pose a threat to law and order in society, as was seen in the aftermath of Salman Rushdie's misguided venture. But even so, blasphemy today can in no sense threaten the existence or continuity of Islam as a great religion, a legal system and a major civilisation"<sup>934</sup>

Kamali argues that, historically, "The scholastic doctrines of the *madhahib* treated blasphemy and apostasy on the same footing and viewed blasphemy as an extension of apostasy, a position which is no longer justified."<sup>935</sup> He clearly concludes that blasphemy should be categorised as a *ta'zir* (تعزير) crime, that allows the judge who is considering any case, to have the discretion to deliver a specific sentence, depending on the surrounding circumstances in each individual case. His final words explains that a clearer definition of the crime itself, should also be achieved, to overcome any ambiguity and confusion that may exist :

Based on this appraisal, the precise definition of blasphemy, the acts and words that incur this offence, and then the quantum of the punishment, may be determined and specified, or amended and refined as the case may be, by the legitimate political authority and legislative organ of the state in modern times.<sup>936</sup>

On that very note, there is a need to look into the future and introducing the concept of the 'universality of religion,' in the worshipping of God, when it is defined as the 'submission' to God. This issue is addressed quite sensibly, by Abdel Salam Sidahmed,

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<sup>934</sup> Ibid., p249

<sup>935</sup> Ibid., p250

<sup>936</sup> Ibid., p250



in his article 'Freedom of Religion, Apostasy and Human Rights : An Appraisal,' where he contemplates that :

A significant feature of today's realities is the existence of Muslim minorities in the majority of countries, including the expanding Muslim communities in Europe and North America. Members of these communities have over the years sought and in most cases achieved rights to practice their religious obligations and values both as individuals and in groups, including the right to convert others to Islam. This is exactly the provision of article 18 of the UDHR.<sup>937</sup>

Now if we are to turn the table and look into a situation where Muslims are a majority; would they accord the same rights to a non-Muslim minority? If the answer is yes, as one would expect, would such a right cover recognition of the right of individual Muslims to forsake Islam should they so choose? The answer may not be a simple one for an Islamist or a proponent of apostasy punishment, but the point is clear: *religious freedom is a double edged category and has to be accepted in its entirety. Otherwise it becomes an empty phrase.*

In this context one may ask what would be the situation for Muslims, especially Muslim minorities, if conversion to Islam in the societies they are living in were to be outlawed!

One final note. Article 18 is not about preaching apostasy or licensing the hegemony of missionaries in the world of Islam. Rather it is simply about *tolerance*. As followers of every religion are bound to think of their faith as the one and only Truth, mutually acceptable principles of human rights may be the only common ground for all.<sup>938</sup>

[Italics added for emphasis]

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<sup>937</sup> Article 18 of the Universal Declaration of Human Rights reads as : "Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private to manifest his religion or belief in teaching, practice, worship and observance," see Sidahmed, Abdel Salam, 'Freedom of Religion, Apostasy and Human Rights : An Appraisal,' in *The Mediterranean Journal of Human Rights*, op.cit., p128. Also see O'Sullivan, Declan, 'The History of Human Rights across the Regions : Universalism vs Cultural Relativism,' in *The International Journal of Human Rights*, Vol. 2, No. 3, Autumn 1998, Frank Cass Publishers, London, p22-48, also see 'Document Section,' p84. Also see O'Sullivan, Declan, 'Al-Islam : An Alternative approach to the Universal Protection of Human Rights' *The Islamic Quarterly*, Vol. XLI, Number 2, The Islamic Cultural Centre, 1417/1997, p130-153.

<sup>938</sup> Sidahmed, Abdel Salam, Ibid., p144



### 3.5 Conclusion.

The evidence found in this Chapter proves that it is obvious that there are two-sides to any debate. It has been shown that in all *tafsir* of the Qur'an, ranging from the classical exegetes, Ibn 'Abbas, al-Baydawi, al-Shawkani, al-Zamakhshari, al-Tabari and Ibn al-Kathir, to the more contemporary interpreters, such as Abdullah Yusuf Ali, Asad, Muhammad and Maulvi Mohammad Ali, that not a single one presents a clear message that the death penalty for apostasy is stated the Qur'an. It is obvious that those who are more inclined to promote the death penalty include far less qualified experts on *tafsir*, such as Muhammad Tahir-ul-Qadri, Muhammad Hamidullah, Mohammad Iqbal Siddiqi. Also included in the latter category is Samuel Zwemer, who was a Christian missionary, and explained his own subjective reasons for the comments he made.

Al-Suddi was the only classical exegete who had speculated in his *tafsir* of 9:12 that the oath, or covenant the verse refers to would imply that it was the agreement and commitment for joining Islam. However, as this was a mere contemplation by Al-Suddi, it is only a slight hint, and even a vague suggestion from a single person's perspective on what the message being conveyed could be.

Obviously then, the death penalty is not clearly stipulated by the Qur'an according to the legitimate exegetes. The word 'legitimate' is used here, because the other interpreters who promote the capital punishment as an integral part of the Qur'an are those who can be argued to have suspicious motives. An example of this would be the translation of 9:12 by Muhammad Tahir-ul-Qadri, who suggests that the verse uses the word 'decapitate' as the penalty for an unbeliever. Not one of the six English translations used in this research use that word, so this again shows that any translation and interpretation is subjective and reflects the individual view of the interpreter and translator. Their own understanding of the Qur'an, and how they portray it, can be used to positively defend and justify their pre-determinism.

The overall review of *tafsir*, which argues that the death penalty is not declared in the Qur'an, supports the research in Chapter One which suggests that *irtidad* and *ridda*



cannot be included in the category of the crimes punished by *hudud* – because the *hudud* crimes and the appropriate penalties for them, are openly stated in the text.

The right for a person's free-will to choose or deny genuine '*iman*' in God is the main undercurrent of all the verses that are provided in this Chapter. It has also been proven that the general ethical thrust of the Qur'an emphasises religious tolerance. Various verses encourage Muslims to acknowledge and accept, with no question, that believers of other religions are entitled to co-exist alongside Muslims. Some verses are argued to have been abrogated (*naskh*) by others that were revealed later. However, a counter-argument to this claim questions the concept of *naskh* (abrogated) and suggests that the verses were not 'terminated', but were 'suspended'.

The *ahadith* that are used on each side of the debate tend to depend on the hidden agenda of the presenter. Some *ahadith* are used to legitimise the argument that the death penalty for a *murtadd* is based on Sunnah. However, although the *ahadith* are considered to be on an almost equal level with the Qur'an, there is a noticeable difference between the two. The Qur'an has divine origins, and cannot be altered, whereas *ahadith* were written by humans, and therefore can be altered for political reasons. This is not just a speculation, as some *hadiths* are proven to have been altered or even created, to be used solely for political ends. Added to this point, it can also be seen that there are weak *hadiths* that are used to defend the death penalty for apostasy. The ones that are used, if better assessed, can be seen to involve other, more severe and heinous acts that affected the whole Islamic community as opposed to being the simple change in the private religious belief of an individual.

The main example of this misinterpretation of such *hadith* involves a story of a group of men from the 'Ukl tribe. The men, who had become ill, were offered a way to recover by the Prophet Muhammad, by staying with some camel herdsman in the desert. The men recovered and then committed the crimes of murder and theft. It can be seen that the fact they also apostatised from Islam while committing such crimes, their apostasy – although being a very offensive sin – becomes a rather peripheral issue in this particular



case, when taking into account the other more evil and odious acts the men undertook. The men were punished for the crimes of murder and theft, and not for leaving their religion.

The final point to be made becomes clear in recognising that the very concept of religious freedom and the freedom of choice for each person to either accept or reject a religious belief is a 'double edged category.' If it is free for everyone to join the Islamic community, it should be equally free for them to leave that faith, should that be their personal decision. If the death penalty for apostasy was the law in every religion, it would be impossible for Christians, Jews or believers of non-monotheistic religions to become a Muslim. In this situation, the Islamic community could not – and would not – increase or develop to become the better chosen path to God, because people would be far too terrified in leaving the religious belief that they happened to be born into – because, to do so, they would be killed. They would be killed by the established death penalty for those who reject one religious path to God, in their wish to join another.



## CHAPTER FOUR

### 4.0 A REASSESSMENT OF THE *RIDDA* WARS: APOSTASY OR TREASON?

#### 4.1 Introduction.

This Chapter will assess whether physical attacks and waging war against the authority of the state can be equated to the private, passive act of apostasy when a person only changes their religion, without resorting to physical attacks on other Muslims or against the community. The research aims to explore whether the latter can be legitimately included as a 'physical' offence against Islam and therefore, whether the perpetrator of apostasy could legitimately receive the same form of punishment as those found guilty of treason, which includes deliberate rebellious and physical attack against the state, which is irrelevant as to whether the perpetrator also renounces Islam while they do this.

The Chapter will address the question of whether the battles undertaken by Abu Bakr al-Siddiq, following the death of the Prophet Muhammad in 11AH/632AD, can legitimately be named *hurub al-ridda* (The Wars of Apostasy.) One argument is presented by Muslim scholars, who believe that the rebellious rejection by certain tribes against paying the *zakat* (alms tax for charity) to Abu Bakr was not their rejection of the Islamic community, or their rejection of their faith in Islam, but was due to their belief that the contract to pay *zakat* was between themselves and the Prophet. Once he had died, they felt that the contract had been terminated. However, some tribes did reject their faith and left the Islamic community. The Chapter follows the argument that the death penalty within *Shari'ah*, as the sentence for apostasy (*irtidad*), was based on the events that took place during the *hurub al-ridda*, together with various *ahadith* and certain interpretations and *tafsir* of the *ahadith*. The death sentence for apostasy cannot be found specifically in the Qur'an, or the Prophet's Sunna. It is argued that the Prophet implemented a very tolerant approach to those who chose to leave their faith, when they committed very simple, passive, private apostasy, which did not involve any aggression or rebellious acts against the Islamic community or the Islamic governance. The *ahadith* and certain verses of the Qur'an that are related to apostasy are addressed in this Chapter. Also, various questions



arise, in order to determine whether the battles were, indeed, for fighting those who were believed to 'have rejected their faith' or if – in fact – the battles had been undertaken due to the tribal rebellion, when various tribes split away from the authority based in Medina, and not from Islam as a religion. The conclusion illustrates the view of several contemporary Muslim scholars, who now argue that the death sentence for apostates has to be re-addressed and re-valued, without basing *al-fiqh* (Islamic jurisprudence) on the seemingly unquestioned historical reports that label this episode as the *hurub al-ridda* (The Wars of Apostasy.)

It can be argued that Abu Bakr's battles against those who were believed to be apostates from Islam, were used as a strong historical basis to defend the *Shari'ah* death penalty to kill those who are perceived to have left Islam, ever since those battles. The death sentence for apostasy from Islam, is often argued to have been derived from these circumstances that followed the death of Prophet Muhammad. When the Prophet died in 11AH/632AD, the new administration of the Islamic community faced a very dangerous situation. Widespread disorder spread throughout the Arabian peninsula, with many tribes refusing to pay *zakat*. However, the tribes defended themselves stating that they had remained devout believers within Islam, because they claimed that paying *zakat* was not one of the 'Five Pillars' of Islam. They also believed that *zakat* was merely a tax to be paid to the 'government', and their commitment was to God's Prophet, as opposed to an elected leader. However, this whole period of battles, as a response to their refusal to pay *zakat* tax, became known as *hurub al-ridda* : The Wars of Apostasy.<sup>939</sup>

As Wael Hallaq explains, in the section of 'Apostasy' in the *Encyclopaedia of the Qur'an*, the start of the hostile engagements between tribes shortly after the Prophet Muhammad had died, began :

Upon the Prophet's death and until the early months of 13/634, Muslim Armies engaged in a number of battles that

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<sup>939</sup> Syed Barakat, Ahmad, 'Conversion From Islam,' in *The Islamic World, From Classical to Modern Times – Essays in Honour of Bernard Lewis*, (Eds.) Clifford Edmond Bosworth, Charles Issawi, Roger Savory and A. L. Udovitch, 1989, The Darwin Press, Inc., Princeton, USA, p9



came later to be known as the wars of apostasy (*hurub al-rida*).<sup>940</sup>

Hallaq also argues that, apart from within the cities of Medina and Mecca, plus the immediate vicinities surrounding the region, virtually all of tribes in Arabia rose up to revolt against the Muslim rule. It is important to note, however, that the explanations of what reasons exactly induced this uprising is another area of speculation, where there are certainly disagreements as to what the roots of the cause were. It is very apparent that :

Scholars disagree as to the causes of resistance, some arguing that it was provoked by a rejection of the taxes the Prophet imposed on the Islamicized tribes together with what that clearly implied in terms of political domination. Others have seen it as expressing a religious revolt, challenging the religion of the new state at Medina.<sup>941</sup>

Muhammad Zafrullah Khan, in his work *Punishment of Apostasy in Islam*, also presents the argument that the actions undertaken by the tribes Abu Bakr had fought, are more relevant to acts of a far more serious crime, than the act of 'apostasy' alone. He suggests that Abu Bakr's *Al-Ridda* battles have been – and still is – used in defence, by those who believe that the legitimate sentencing for the crime of 'simple apostasy' is the death penalty. Khan declares that :

Our naïve divines who cite this instance assume that those apostates were harmless people, whose only fault was that they did not consider themselves bound to pay the *zakat* to the Khalifa and had given up *salat*. It is imagined that they had committed no wrong beyond this and that they did not fight the Muslims, nor hurt anyone. It is supposed that they had no quarrel with the Islamic state, that indeed they were obedient to the Khalifa and supported him and were eager to live peacefully, and obediently under the authority of the Islamic state. Had that been so, then it would be doubtful whether they were apostates at all. But the case was not as our divines imagine. Those apostates had repudiated their allegiance to the Islamic state and had taken up arms against it. Those of them who continued to adhere to Islam

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<sup>940</sup> Hallaq, Wael, 'Apostasy' in *Encyclopaedia of the Qur'an*, edited by Jane Dammen McAuliffe, Volume One, 'A-D,' Brill, Leiden, Netherlands, 2001, p120

<sup>941</sup> Hallaq, Wael, *ibid.*, p120-121



were killed, and forces were got ready to wage war against the Islamic state.<sup>942</sup>

He continues this position by arguing that the tribes who were accused of being ‘apostates,’ actually invaded Medina and besieged it, with the aim of destroying the Islamic community. It was due to this fact that Abu Bakr as-Siddiq defended the Islamic state with the sword, in order to defeat and subdue the attackers. Muhammad Zafrullah Khan argues that “This lends no support to the thesis that the punishment of simple apostasy is death.”<sup>943</sup> ‘Simple apostasy’ is a passive, internal act for a person to change their faith. The concept of changing one’s faith does not include or involve the violent act of destroying the faithful community they had lived within. This would clearly be the act of other specific crimes which could easily be categorised within the realm of treason, murder, sedition, armed robbery, for example.

Hallaq also postulates an alternative concept, stating that “a more convincing view, however, is that each of the revolts against the new order had its own causes.”<sup>944</sup> He elaborates his explanation by suggesting that of the six major areas where the uprising occurred, four of them had religious connotations. Each of these rebellions had been promoted and led by charismatic leaders, who had declared themselves to be either a prophet, a prophetess or a soothsayer. Those guilty of this were Al-Aswad al-‘Ansi in Yemen, Musaylima in Yamama, Tulayba b. Khuwaylid from the tribes of Banu Asad and Banu Ghatafan. The fourth perpetrator was Sajah, from the tribe of Tamim.<sup>945</sup>

Hallaq then argues that the hostile resistance in the other two areas of the six main focus points of the uprisings, had been undertaken in the east and southeast regions of the Arabian peninsula. The specific cause that induced these battles had been the refusal of the tribes there to remain under the dominating authority of Medina, which also included

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<sup>942</sup> Khan, Muhammad Zafrullah, *Punishment of Apostasy in Islam*, no date given, London Mosque, England, p41

<sup>943</sup> Ibid., p41

<sup>944</sup> Hallaq, Wael, op.cit., p121

<sup>945</sup> Ibid., p121



their refusal to pay tax that had been imposed upon them by the Prophet Muhammad in the year 9AH/630AD.<sup>946</sup>

He also suggests that when reading the work of classical Islamic sources, and also the work of modern scholars, one discovers that they are inclined to promote the understanding that the battles of that time-scale, which were undertaken within the region of Arabia – thus, before the conflict and conquests began in Syria and Hira – as all to be considered falling “into the category of the wars of apostasy.”<sup>947</sup> However, Hallaq presents another interpretation of these battles, and the very different reasons and meanings of why they were launched in the first place. He declares, quite openly, that :

In point of fact, of all the centres of revolt only Najd qualifies, strictly speaking, for classification as a centre for apostate rebellion. The Banu Hanifa, led by Musaylima in Yamama, had never been subject to Medinan domination nor did they sign any treaty either with Muhammad or with his successor Abu Bakr (11/632-13/634). It was only when the military commander Khalid b. al-Walid (d.21/642) defeated them in 12/633 that they came, for the first time under Medinan domination.<sup>948</sup>

To highlight his point, he emphasises the position and circumstances that the Banu Hanifa were in, which clarifies the reasons why there was no possibility of any apostasy from Islam that can be attached to their behaviour. He simply concludes here, that :

In other words, they never converted to Islam in the first place so that they cannot correctly be labelled as apostates.<sup>949</sup>

His further explanation suggests that a very similar situation also existed within ‘Uman, al-Bahrayn, al-Yaman and Hadramawt. In these places Muhammad reached agreements and signed ‘peace-treaties’ with the military leaders, some of which are argued to have been Persian ‘agents,’ who were then overwhelmed and defeated by local tribes. This having been the situation and the events that had occurred, Hallaq continues his argument

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<sup>946</sup> Ibid., p121

<sup>947</sup> Ibid., p121

<sup>948</sup> Ibid., p121



with a clear attempt to clarify and explain the reasons for these historical events to have occurred:

Thus, the tribes' resistance to Medina did not presuppose a particular relationship in which they paid allegiance to the Muslim state. Again, their uprising does not constitute apostasy, properly speaking.<sup>950</sup>

Having mentioned above the Najd tribes as being the only exception which did involve the act of apostasy during these battles, Hallaq explains the reasons why they can be defined as apostates, whereas – as has just been explained – the other battles did not relate to this factor. He suggests that:

The tribes of Najd, on the other hand, were their own masters and signed treaties with Muhammad, the terms of which required them to adopt Islam and to pay homage as well as taxes to Medina. Their revolt, thus, constituted a clear case of apostasy. In the other cases it was not exactly apostasy on the part of the tribes which prompted the wars but rather the Medinan religious, political and territorial ambitions.<sup>951</sup>

A detailed reference of the period following the Prophet's death, and the consequences that lead to it, has been presented by M. J. Kister. He argues that the tribes who revolted at that time caused immense concern about a greater potential danger, as the revolts could be seen as being just the 'tip of the iceberg,' which might eventually lead to the very termination of the Islamic community to exist.<sup>952</sup>

Kister argues that the rebellious tribes took advantage of the fact that the new leadership in Medina was rather weak, hence their choice was to sever all ties of allegiance with Abu Bakr, once he had become the newly elected Caliph. They based this on the grounds that as the Prophet had died, their agreements made with him, were now groundless and invalid. It is argued that they wished to return to the pre-Islamic tribal status, and re-establish the links with Mecca that had occurred in the time of *Jahiliyya*, and an

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<sup>949</sup> Hallaq, Wael, Ibid., p121

<sup>950</sup> Ibid., p121

<sup>951</sup> Ibid., p121



important point to raise is that “they were willing to negotiate over agreements with the Medinan leadership which would be based on the principle of *non-aggression*.”<sup>953</sup> [Italics added by author of this research]. Such offers that were provided, included the defence of Medina for a financial reciprocation, which would be offered by the inhabitant tribes, in protection from any attacks from other tribes. This offer was not accepted, as “Abu Bakr refused to negotiate with the chiefs of the tribes and decided to fight the hostile forces in the vicinity of Medina.”<sup>954</sup>

The tribes sent out by Abu Bakr managed to defeat a number of the tribes, which reduced the pressure of any further attacks against the Islamic community, and also brought back to Medina the control of the area and over all who lived in the region. Having established his control and receiving their loyalty, he then sent out tribal based troops to the northern and eastern borders of the Arab peninsula, which lead to the conquests of the Persian and Byzantine empires.<sup>955</sup>

However, by assessing the documents and data reports from the time of action that lead to *ridda* by the tribes, Kister argues that this “may help in elucidating certain economic aspects of the revolt.”<sup>956</sup> He supports this approach, by also analysing relevant *hadith* that refer to *ridda*, in order to highlight the notions that were upheld by several Muslim scholars: “concerning the conditions imposed on those willing to embrace Islam after the death of the Prophet, the status of the *ridda* people, and the question of whether it was right to make war on them.”<sup>957</sup>

It is argued that the tribes involved in the *ridda* movement were acting against certain political and social aspects that they believed had changed. Also, as M. A. Shaban attests, it becomes possible to focus more attention on the economic factors which overwhelmed the struggle within the tribes, whether or not they held any allegiance with Medina. There

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<sup>952</sup> Kister, M. J. ‘.....illa bi-haqqihi.....A Study of an Early *hadith*’ in *Jerusalem Studies in Arabic and Islam*, The Magnes Press, The Hebrew University, Jerusalem, Israel, 1984, Vol.5, p33

<sup>953</sup> Ibid., p33.

<sup>954</sup> Ibid., p33.

<sup>955</sup> Ibid., p33.

<sup>956</sup> Ibid., p33.



was great anxiety amongst the tribes, who were against what was seen as becoming the Medina hegemony, which seemed to either interrupt or even remove commercial dealings within inter-tribal relations.<sup>958</sup> This factor of an economic effect of conversion into Islam, can also be traced in the early *hadith*. The arguments covering the relevant *ahadith* and Qur'anic verses will be covered further below. Even in Shafi'i's *Kitab al-Umm*, it becomes apparent that several Qurayshi merchants were concerned with the negative effect on their trade, after their conversion to Islam. Some merchants shifted their trade into Iraq and Syria and once having embraced Islam, they confided in the Prophet concerning their apprehension that their financial income could well be dramatically reduced, due to their departure from the people of 'unbelief.' They were also concerned that the fact they had now become Muslims could rather displease the leaders of both Iraq and Syria. The Prophet aimed to alleviate their trepidation by reassuring them that any negative influence or domination by the Persian and Byzantine leaders, was close to being over.<sup>959</sup>

Following the death of the Prophet, which led to an unrest in Mecca, the merchants felt that their future was uncertain. Some scholars suggest that the merchants feared that they would lose their means of maintaining their trade, should they retain loyalty to the Islamic community, by keeping the obligations that this loyalty involved. The fear and the concern did "seem to cast a shadow over the city."<sup>960</sup> Some tribes delayed engaging in a revolt and continued, with much reluctance, to pay their *zakat*. It is reported that Suhayl b. 'Amr mounted the *minbar* and delivered an assertion to the crowd of Quraysh that, based on his own personal wealth, he suggested that they should all pay their agreed obligation of *zakat* to the governor. He provided this suggestion with his guaranteed support, by declaring that he would personally offer a compensation payment to them all, for each *zakat* payment they had made, should the 'administration' of Medina collapse. It is recorded by al-Baladhuri, in his work *Ansab al-ashraf*, that the statement Suhayl b. 'Amr made included ".....*wa-ana daminun, in lam yatimma l-amru, an aruddaha*

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<sup>957</sup> Ibid., p33.

<sup>958</sup> Shaban, M. A., *Islamic History : A New Interpretation*, Cambridge, 1971, p19-23

<sup>959</sup> Muhammad bin Idris Shafi'i, *kitab al-Umm*, Cairo, 1321-1325/1904-1908, Cairo, Vol.IV, p94

<sup>960</sup> Kister, M. J. '.....*illa bi-haqqihi.....*', op.cit., p34



*ilaykum.....*”<sup>961</sup> It is also reported that a similar proposition was presented by Al-Jarud, who was the leader of the ‘Abd al-Qays tribe. He gave the promise that, should the members of the tribe continue to pay their *zakat*, thus remaining faithful to Islam, he would then repay them double the amount of their financial losses, should any loss incur.<sup>962</sup>

What becomes apparent in the studies of the recorded speeches that were made by the tribal leaders at that time, with their offerings of financial security to the tribes, and in other documents that are still extant from that period, is that the economic aspect of these promises, often referred to as *al-ridda*, i.e. the departure from Islam by apostates, shows that religion is far from the main issue in question. In fact, it can be argued that the faith in Islam of those who refused to pay the *zakat* was not in question at all. It is argued that their faith still remained in God and in Islam, but the financial obligation was considered to be a material deed, and not one that carried any religious relevance with it. Indeed, as Kister points out :

The tribes’ unwillingness to pay the tax, the *zakat*, is plainly reflected in the recorded speeches of the tribal leaders and in the verses of their poets. It is noteworthy indeed that when the leaders of the rebellious tribes were captured and brought before Abu Bakr accused of apostasy, they defended themselves by saying that they had not become unbelievers, but were merely stingy with their wealth (i.e. they were reluctant to pay the *zakat* from it.)<sup>963</sup>

<sup>961</sup> Kister cites the source of this transliteration as : al-Baladhuri, Ahmad b. Yahya, *Ansab al-ashraf*, ed. Muhammad Hamidullah, Cairo, 1959, Vol.I, p304, but does not offer any full translation. He also cites other sources of the statement as it appearing in Muhammad b. Habib, *Munammaq*, ed., Khurshid Ahmad Fariq, Hyderabad, 1384/1964, p260-261. And includes two other transliterations of the Arabic script of the statement made by Suhayl b. ‘Amr, and their sources, but also does not offer any full translation. They appear as : “Ibn al-Athir, ‘Izz al-Din, *Usd al-Ghaba fi Ma’rifat as-Sahaba*, Al-Matba’a al-Wahhabiyya, Cairo, 1280, Vol.II, p371 penult : *anna rasula llahi lamma tuwuffiya irtajjat makkatu lima ra’at qurayshun min irtidadi l-‘arabi wa-khtafa ‘attabu bnu asidin al-umawiyu, amiru makkata li-l-nabiyyi(s) fa-qama suhaylu bnu ‘amrin khatiban*, and also see Ibn Hisham, ‘Abd al-Malik, *al-Sira al-nabawiyya*, ed., Mustafa I-Saqa, Ibrahim al-Abyari, ‘Abd al-Hafiz al-Shalabi, Cairo, 1355/1936, IV, p316 : .....*anna akthara ahli makkata, lamma tuwuffiya rasulu llahi(s) hammu bi-l-ruju’i ‘an al-islami wa-aradu dhalika hatta khafahum ‘attabu bnu asidin fa-tawara fa-qama suhaylun.....*” See Kister, M. J. *ibid.*, in footnote 6 on p35

<sup>962</sup> Ibn Abi l-Hadid, *Sharh nahj al-balagha*, ed., Muhammad Abu l-Fadl Ibrahim, Cairo, 1964, XVIII, p57.

<sup>963</sup> Kister, M. J. ‘.....*illa bi-haqqihi.....*’, *op.cit.*, p35



The main argument that the rebellious tribes gave, was that their desire to secede from Madina, and especially from Abu Bakr, was simply because their allegiance had been solely to the Prophet Muhammad, and upon his death, these agreements had been naturally terminated. They had accepted his authority but it was confined to him alone, therefore there was no understanding or acknowledgement for any commitment to continue with Abu Bakr. This opinion has also been expressed by both Isma'il b. 'Umar Ibn Kathir, in his work *al-Bidaya wa-n-Nihaya fi at-Ta'rikh*, and also Muhammad b. Jarir Al-Tabari in his work *Ta'rikh ar-Rasul wa-'l-Muluk*.<sup>964</sup>

#### **4.2 *al-ridda* in the Qur'an and Hadith.**

Abdulaziz Sachedina comments on the meaning of Abu Bakr's war on *Ridda* and the related *hadith* from Al-Bukhari, which refers to "Killing Those Who Refuse to Fulfill the Duties Enjoined by God and Considering Them Apostates."<sup>965</sup> Sachedina argues that Abu Bakr rejected the refusal of some Arab tribes to pay the *zakat* tax that they had previously paid, once having converted to Islam. Their refusal was considered to be an insurrection against the Medina government. Sachedina also suggests that the main issue at stake here was the denial to pay the obligatory divinely ordained *zakat* tax that the first established Islamic government expected, due to the agreed payment of it as part of being a member of the Muslim community. Initially the *zakat*, based on certain categorised property, could not, in the early stages, be restricted as a charity that would be distributed to the poor members of the Muslim community. It had to be used for military support and other related political purposes.<sup>966</sup>

The *zakat* then, was used to promote religious and moral values and was to be perceived as a religious duty and an obligatory moral code.<sup>967</sup> The term *zakat*, when used in the

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<sup>964</sup> See Ibn Kathir, Isma'il b. 'Umar, *al-Bidaya wa-n-Nihaya fi at-Ta'rikh*, Cairo, 1351/1931, Vol.VI, p313 and also see Al-Tabari, Muhammad b. Jarir, *Ta'rikh ar-Rasul wa-'l-Muluk*, ed., Muhammad Abu al-Fadl Ibrahim, Dar al-Ma'arif, Cairo, no date given, Vol.II, p417

<sup>965</sup> Little, David; Kelsay, John and Sachedina, Abdulaziz, A., *Human Rights and the Conflict of Cultures : Western and Islamic Perspectives on Religious Liberty*, 1988, University of Carolina, USA, p97

<sup>966</sup> Sachedina, Abdulaziz, A., in *Human Rights and the Conflict of Cultures*, Ibid., p97

<sup>967</sup> Sachedina suggests that this point can also be raised by analysing the complexity of such religious-moral distinction, as can be seen in the Christian perspective of the issue in the Gospel of Matthew. This has been covered by Little, David and Twiss, Summer, B., in *Comparative Religious Ethics : A New Method*, 1978,



Qur'an, signifies virtue and righteousness in general, together with the Qur'an emphasising utilisation of *zakat* for these reasons. It is declared as one of the main factors in the role of a committed believer in, for example in *Ar-Rad*, 13:22<sup>968</sup> and *Al-Fatir*, 35:29.<sup>969</sup> Commentary on the first verse, *Ar-Rad*, 13:22 suggests that the verse means that "if they committed a sin, they repel it (i.e. its effect) by repentance."<sup>970</sup> Other commentators, including az-Zamakhshari, suggest that the 'repelling' relates to the doing of good deeds in atonement of a previous, even unintentional, bad deed<sup>971</sup> that had been undertaken. Az-Zamakhshari also argues that it refers to endeavours by words and/or deeds which will attempt to prevent evil situations.<sup>972</sup> However, Mohammad Asad argues that the majority of the classical exegetes hold the opinion that "they *repay* evil with good" [*italics from original*].<sup>973</sup> Al-Hasan al-Basri suggests that "when they are deprived (of anything) they give; and when they are wronged, they forgive."<sup>974</sup>

At-Tabari also suggests that a similar view that "they repel the evil done to them by doing good to those who did it" and "they do not repay evil with evil, but repel it by (doing) good."<sup>975</sup> Mohammad Ali also argues that the verse portrays

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"where the authors maintain the necessity and possibility of rigorous distinction of moral and religious categories." Sachedina, footnote 1, p100, Ibid.

<sup>968</sup> "Those who patiently persevere, seeking the countenance of their Lord; Establish regular prayers; spend Out of (the gifts) We have bestowed for their sustenance, secretly and openly, and turn off Evil with good: for such there is the final attainment of the (Eternal) Home; - " Qur'an Surah *Ar-Rad*, 13:22, Ali, Abdullah Yusuf, in *The Holy Qur'an : Text, Translation and Commentary*, 1969, Sh. Muhammad Ashraf, Kashmiri Bazar, Lahore, Pakistan, Vol. II, p610

<sup>969</sup> "And those who rehearse the Book of Allah, establish regular Prayer and spend (in Charity) out of what We have provided for them, secretly and openly, hope for a Commerce that will never fail : " Qur'an Surah *Al-Fatir*, 35: 29, Abdullah Yusuf Ali, in *The Holy Qur'an*, Ibid., Vol. III, p1160

<sup>970</sup> "Ibn Kaysan, as quoted by Zamakhshari," Mohammad Asad, in *The Message of the Qur'an : Translated and Explained*, 1980, Dar al-Andalus Limited, Gibraltar, footnote 44, p363. (Zamakhshari's full name : Mahmud ibn 'Umar az-Zamakhshari, (died 538H), found in Mohammad Asad, in *The Message of the Qur'an*, Ibid., pX also see Ahmad, *The Holy Quran*, Ibid., pL )

<sup>971</sup> Razi, quoted by Mohammad Asad, in *The Message of the Qur'an*, Ibid., footnote 44, p363. (Razi's full name : Abu 'Fadl Muhammad Fakhr ad-Din ar-Razi, (died 606H), found in Mohammad Asad, in *The Message of the Qur'an*, Ibid., pX also see Ahmad, Mirza Bashir-ud-Din Mahmud, *The Holy Quran with English Translation and Commentary*, 1947, Sadr Anjuman Ahmadiyya, Qadian, India, Volume I, pL )

<sup>972</sup> Zamakhshari, quoted by Mohammad Asad, in *The Message of the Qur'an*, Ibid., footnote 44, p363.

<sup>973</sup> Mohammad Asad, in *The Message of the Qur'an*, Ibid., footnote 44, p363.

<sup>974</sup> Al-Hasan al-Basri is quoted by al-Baghawi, Razi and Zamakhshari, found in Mohammad Asad, in *The Message of the Qur'an*, Ibid., footnote 44, p363. (al-Baghawi's full name : Al-Husayn ibn Mas'ud al-Farra' al-Baghawi, (died 516H), found in Mohammad Asad, in *The Message of the Qur'an*, Ibid., pX

<sup>975</sup> Mohammad Asad, in *The Message of the Qur'an*, Ibid., footnote 44, p363. (Tabari's full name : Abu Ja'far Muhammad ibn Jarir at-Tabari, (died 310H), found in Mohammad Asad, in *The Message of the Qur'an*, Ibid., pX also see Ahmad, *The Holy Quran*, op.cit., pL )



the noble doctrine of meeting evil with good, which Christians generally put forward as being taught nowhere but in the Christian religion. The Qur'an not only teaches it but improves upon it, making it practicable, so that its observance in Islam does not interfere with law and order, whereas the Gospel doctrine, owing to impracticability, has not been observed to this day. *Evil* is a thing which is by all means to be *repelled*, and hence *good for evil* is recommended only in cases when evil would be *repelled* by that good. A society which unconditionally requited evil with good would abolish all safeguards; evil-doers who received nothing but good for every evil they committed would most assuredly establish a condition of anarchy by their evil deeds. [*italics from original*]<sup>976</sup>

A comment on the second verse Surah *Al-Fatir*, 35:29, by Abdullah Yusuf Ali, is that the verse relates to the faithful who take God's Revelation in the Book close to their heart. They seek to get close to God by undertaking what is mentioned in the verse itself: to pray regularly. In undertaking daily *salat*, they move closer to the more practical demonstration of paying some charity to their fellow followers. Thus, the devout believer is not ashamed of the public charity (as the verse mentions the "openly") but also does not pray purely to be publicly acknowledged (as the verse mentions the "secretly"). The word 'act' refers for Muslims to do what is necessary to support the community of believers, whether it is publicly discussed or not.<sup>977</sup>

Sachedina explains that the Arab tribes who converted to Islam during the Prophet's lifetime were introduced into paying the *zakat* tax. The amount to be paid was calculated with agreements made between the believers and the Prophet. Sachedina contemplates that :

it is plausible to maintain, on the basis of early sources, that the character of *zakat* in the time of the Prophet was vague; it represented more a tax demanded by the representative of the Medina polity than Islamic religion.<sup>978</sup>

<sup>976</sup> Maulvi Mohammad Ali, 1920, *The Holy Qur'an : Containing the Arabic Text With English Translation and Commentary*, Ahmadiyya Anjuman-I-Ishaat-I-Islam, Lahore, India, footnote 1274, p503

<sup>977</sup> Abdullah Yusuf Ali, in *The Holy Qur'an*, op.cit., Vol. III, in footnote 3914, p1161

<sup>978</sup> Sachedina, Abdulaziz, A., in *Human Rights and the Conflict of Cultures*, op.cit., p97-98



He believes that the Arab tribes accepted the tax had to be paid only for political reasons and had no relation to the religion they followed. The important point he then raises is that “it was for this reason that after the Prophet’s death many Arab tribes refused to continue to pay *zakat*, as they considered that their agreement with the Medina government had been cancelled with the death of the Prophet.”<sup>979</sup> At this stage of receiving the refusal due to these reasons, Abu Bakr while communicating with relevant tribes, focused on the issue that they still had to fulfill the conditions that they had previously promised to agree with, which included paying the *zakat*. Abu Bakr defended this position, as “their agreement was not with Muhammad, the mortal being, but with God, whom Muhammad represented as his messenger, Abu Bakr being the successor to Muhammad as the leader of Medina.”<sup>980</sup> The tribes also emphasised that they had no obligation to follow Abu Bakr, whom they also perceived to be an incompetent leader. However beyond that, they declared that they also had a legitimate right in the Qur’an, which confirmed that there was no commitment for them to pay any *zakat*, so their position was wholly valid within Islam. As Kister points out :

They are said to have based themselves on Sura IX, 103 :  
 “....Take alms of their wealth to purify them and to cleanse them thereby and pray for them, thy prayers are a comfort for them....” It is the Prophet who is addressed in this verse and ordered to collect the tax; and it was the Prophet who was authorised to purify and cleanse them and to pray for them in return for their payment. Consequently they considered themselves dispensed from their obligations towards the Prophet, as his successor had not the ability to grant them the compensation mentioned in the Qur’an.<sup>981</sup>

Kister suggests that it is even somewhat doubtful whether the leaders of the rebellious, seceding tribes actually bothered utilising the interpretations of the Qur’anic verses in defending their position, during negotiations with the Muslim leaders. It was enough for them to state that they believed their allegiance was solely with the Prophet, and upon his death, this terminated the contract agreement and the attached obligations that went with

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<sup>979</sup> Ibid., p98

<sup>980</sup> Ibid., p98

<sup>981</sup> Kister, M. J., ‘....*Illla bi-haqqihi*....’, op.cit., p35-36



it.<sup>982</sup> Therefore, it is noteworthy that the *ahadith* which focus on the religious aspects of the '*hurub al-riddah*' can also provide another aspect of the practical reasons which induced such a secession, due to the circumstances that the tribes were confronted with at that time. The *ahadith* that are used can either support Abu Bakr's actions, by those who promote the legitimacy of the title *hurub al-ridda* because 'apostasy' was the sole reason for the battles. However, other *ahadith* can support the argument that the tribal rejection of paying *zakat* was due to an economic contract that had terminated, rather than the tribes removing themselves from Islam. This is an obvious illustration which can show that whatever the underlying agenda a person wishes to promote, they can select the appropriate *ahadith* in order to defend their perspective as being legitimate, as it would have been cited in the Sunnah.

Some of the late compilations of the *hadith* collections and the *fiqh* (jurisprudence) literature elucidate various aspects that occur as a theme within the traditions. One example would be the commentary of al-Nawawi (d.676AH) upon Muslim's (d.261AH) *Sahih*, in which there is a specific separation of the act of resistance that occurred in the Arabian peninsula, on three different categories. The first two categories are those who resisted because they were unbelievers. This group would include both the followers of false prophets and those who returned to their former pagan beliefs, and those who had never embraced Islam in the first place. The third category are those who did not renounce Islam, maintaining their belief, but they simply refused to pay the *zakat*. This division has also been presented by A. J., Wensinck, in *The Muslim Creed : Its Genesis and Historical Development*, declaring that there were :

those who followed religious or political adventurers and therefore turned their backs on Medina and Islam and those who cut the links with Medina without associating themselves with any new religious leader. This latter group did not, in all probability, reject Islam; for their attachments to religion must have been too insignificant [*sic*] a fact. What they rejected was *zakat*.<sup>983</sup>

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<sup>982</sup> Ibid., p36

<sup>983</sup> Wensinck, A. J., *The Muslim Creed : Its Genesis and Historical Development*, Cambridge University Press, Cambridge, 1932, p13



Al-Nawawi recorded such division, which also can be traced back to approximately four and half centuries earlier. Another similar division of these seceding groups was also presented by Al-Shafi'i (d.204AH), who drew a definite separation between two main types, there were "those who fell into unbelief like the followers of Musaylima, Tulayha and al-Aswad al-'Ansi and those who refused to pay *zakat*, while remaining faithful to Islam."<sup>984</sup>

It is significant for this research to note the manner of assessment by which Al-Shafi'i used in his analysis of these separate groups, in order to determine whether it was legitimate for Muslims to fight, and even kill, those who are amongst the seceding groups. Al-Shafi'i cast some doubt as to whether the very term *ahl al-ridda* ('people of apostasy') could be valid enough to apply to both separate categories involved in his division. He evidently concluded by justifying that the label was applicable to both groups, as they were both referred to when using the Arabic word *irtadda*, which, in common use, relates in meaning, 'to retreat from former tenets.' Obviously, this generalised definition would justify it referring to both groups, as one group are categorised as haven 'fallen into unbelief,' thus retreating from their religion, while the other group withdrew from paying their *zakat*.<sup>985</sup> Within a closer, more detailed, review of the analysis that Al-Shafi'i undertook on the group who denied any right to pay their *zakat*, he argued that their refusal to pay the *zakat* was based on their interpretation of the verse 9:103, in the manner mentioned earlier, that it was directed towards the prophet alone.

Al-Shafi'i was clearly concerned over what he perceived to be a misinterpretation of the given verse, expressed as : *al-muta'awwilun al-mumtani'un*, and sought to support the war by Abu Bakr as being legitimate. He argued that it was within the legal framework to be able to kill members of such groups, and compared the groups of the offenders to be on an equal level with those Muslims who rebel unjustly against a just ruler. This group are referred to as the *al-bagun*, which is often cited as a crime within *hudud*, due to such

<sup>984</sup> Al-Shafi'i, *Kitab al-Umm*, op.cit., Vol.IV, p134. Also see Kister, M. J., op.cit, p36

<sup>985</sup> Al-Shafi'i, *Kitab al-Umm*, ibid., Vol.IV, p134. Also see Kister, M. J., ibid., p36-p37



sedition. Al-Shafi'i "ultimately justifies without reserve the war-action taken by Abu Bakr against the group which refused to pay the *zakat*."<sup>986</sup>

It is important to note that the rebels were considered to be *al-baghi*, and therefore undertaking sedition (البغي) against the 'state', as opposed to being a *murtadd* (مرتد) in changing their 'iman (faith). Therefore, the death penalty for such a crime as treason is understandable, as they become a danger to the State. However, it is also important to note that whenever a traitor to the State undertakes sedition, whether they change their religion or not when doing so is a completely irrelevant fact, and unrelated to the crime against the ruling authority which they undertake.

Further detailed assessment of this group, who refused to pay the *zakat*, can be found in the work of Al-Khattabi (d.384AH), who held the opinion that they could be identified as rebels (*wa-ha'ula'i 'ala l-haqiqati ahlu baghyin*). However, they were not actually referred to as such during the time of the war of *al-ridda*, as it first came into use during the Caliphate reign of 'Ali.<sup>987</sup> Al-Khattabi presented the case that there were sections within these groups who were prepared to pay the *zakat*, but were prohibited from doing so, by their own leaders. He argued that they were not to be considered unbelievers (*kuffar*), but that they shared the broad name of being amongst the *ahl al-ridda* alongside the genuine unbelievers, only due to the fact that "like them they refused to carry out certain duties and prescriptions of the faith."<sup>988</sup>

In reference to the verse 9:103 Al-Khattabi raises some interesting insights to the circumstances surrounding the events, tied in with the interpretation of the verse's meaning. The issues later developed into a polemic debate and involved both religious and political matters, in reference to whether or not it had been an acceptable decision by Abu Bakr to have fought those who had refused to pay their *zakat*. Al-Khattabi identifies those who gave the most fierce criticism against Abu Bakr's actions were explicitly from the Shi'a *rawafid* movement. The *rawafid* claim that the tribes who had refused to pay up

<sup>986</sup> Al-Shafi'i, *Kitab al-Umm*, Ibid., vol.IV, p134. Also see Kister, M. J., *ibid.*, p37

<sup>987</sup> Kister, M. J., *ibid.*, p37



the *zakat* had simply based their opinions, by holding a different interpretation of the verse 9:103, i.e. as stated above, that they believed the verse had been revealed to be used solely for the Prophet, who should purify and pray for those who paid the *zakat* tax. The *rawafid* concluded from this, that there had been no right at all for Abu Bakr to have imposed his aggressive response upon the tribes, as they understood such acts as this to be oppressive and unjust.<sup>989</sup>

Another faction of Shi'a also argued that, adding to the individual interpretation of the verse by the tribes, there was also a strong feeling of doubt concerning Abu Bakr, who was suspected as an unworthy leader to be entrusted with the *zakat* they would pay. However, Al-Khattabi counters such claims and "marks them as lies and calumnies,"<sup>990</sup> as he argues that he agrees the verse was addressed towards the Prophet alone, but that it also carries with it the obligation upon *all* believers. This means that the verse is the equal duty of every devout Muslim, at all times. Hence, "cleansing and purification will be granted to the believer who hands over the *zakat* and it is recommended that the *imam* and the collector of taxes invoke God's blessing for the payer of the tax."<sup>991</sup> Al-Khattabi adds some strength to his argument by referring to a relevant *hadith* found in the collection by Abu Da'ud, that cites the last words of Prophet Muhammad. This *hadith* is narrated by Ali ibn AbuTalib:

The last words which the Apostle of Allah (peace\_be\_upon\_him) spoke were: 'Prayer, prayer; fear Allah about those whom your right hands possess.'<sup>992</sup>

Kister suggests that this *hadith* is generally interpreted to represent an exhortation to Muslims to undertake the daily prayer and to look after and take care of their relatives and any dependants. However :

al-Khattabi's interpretation is different; according to him '*ma malakat aymanukum*,' 'what your right hand possess'

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<sup>988</sup> Ibid., p37

<sup>989</sup> Kister, M. J., *ibid.*, p37

<sup>990</sup> Ibid., p37-38

<sup>991</sup> Ibid., p37

<sup>992</sup> Abu Da'ud, *hadith* number 5137, narrated by Ali ibn AbuTalib from e:\islamica\winhadis\winhadis.tex on CD Rom *islamica : Digital Library of Islamic Software*, op.cit. Also see Abu Da'ud, Sulaiman bin Al-Ash'ath bin Ishaq Al-Azdi As-Sijistani, *Sunan Abu Da'ud*, op.cit, no date given, no page number given



refers to property and possessions and has to be understood as an injunction to pay *zakat* tax. According to this interpretation *zakat* goes together with prayer. Consequently al-Khattabi deduces that *zakat* is as obligatory as prayer and that he who is in charge of prayer is also in charge of the collection of *zakat*. This was one of the considerations which induced Abu Bakr not to permit that prayer be separated from tax and to set out to fight the group loyal to Islam, but refusing to pay *zakat*.<sup>993</sup>

The most commonly understood and accepted reason that defends and supports both Abu Bakr's pronouncement and the physical act of fighting against those who refused to pay the *zakat*, seems to be rooted in the interpretation of an expression made by the Prophet Muhammad in reference to the genuine creed of Islam and the conditions related to conversion. The problem that Abu Bakr was aiming to resolve, which was considered to try and overcome the rebellious tribes, and particularly how he acted to do so, is well documented within Al-Bukhari's collection of *ahadith*. One *hadith* specifically shows how there developed a controversial challenge between 'Umar (d.644), who was to succeed Abu Bakr as the Caliph, along with several other Companions of the Prophet, who demanded to hear Abu Bakr's defensible justification of killing the members of the tribes, who had refused to pay the *zakat*, but had still publicly announced the *Shahadah*, thus declaring their faith in Islam. Sachedina argues that:

the importance of this tradition cannot be overstressed, because it has been cited as documentation by all Muslim jurists when dealing with the legality of fighting tyrants and apostates. Accordingly its soundness has not been questioned by any scholar.<sup>994</sup>

This *hadith* is cited in Muhammad Muhsin Khan's work *The Translation of the Meanings of Sahih Al-Bukhari*. It was narrated by Abu Hurayrah and reads as :

When the Prophet (peace\_be\_upon\_him) died and Abu Bakr became his successor and some of Arabs reverted to disbelief, 'Umar said "O Abu Bakr! How can you fight these people although Allah's Apostle (peace\_be\_upon\_him) said, 'I have been ordered to fight the people till [*sic*] they say: 'None has the right to be

<sup>993</sup> Ibid., p38

<sup>994</sup> Ibid., p98



worshipped but Allah, and whoever said 'None has the right to be worshipped but Allah,' Allah will save his property and his life from me unless (he does something for which he receives legal punishment) justly and his account will be with Allah?' [sic] Abu Bakr said, "By Allah! I will fight whoever differentiates between prayers and *Zakat* as *Zakat* is the right to be taken from property (according to Allah's Orders). By Allah! If they refused to pay me even a kid (*ewe-lamb*) they used to pay to Allah's Apostle (peace\_be\_upon\_him), I would fight them for withholding it." 'Umar said, "By Allah : It was nothing, but I noticed that Allah opened Abu Bakr's chest towards the decision to fight, therefore I realized that his decision was right."<sup>995</sup>

Shafi'i also cites the same *hadith* in *Kitab al-Umm*, as:

What right do you have to fight these people, when the Prophet said, 'I was ordered to fight people until they say "there is no God but Allah." If they say this, they safeguard themselves and their property from me.'<sup>996</sup>

However, it is important to note here that the *hadith* is cited in a reduced form, because the version in Al-Bukhari's collection of *ahadith*, as shown above, has an extra sentence added-on at the end, which notifies to the reader that 'Umar finally offers his 'agreement' with Abu Bakr's campaign, in the final realisation that it had been God's message to do so. As 'Umar explained :

I noticed that Allah opened Abu Bakr's chest towards the decision to fight, therefore I realized that his decision was right.

It is of important to note that this emphasis differs somewhat, with the version found in *Kitab al-Umm* by Shafi'i. It is, perhaps, important to be aware that the versions of the

<sup>995</sup> Khan, Muhammad Muhsin, *The Translation of the Meanings of Sahih Al-Bukhari*, Arabic-English, Volume IX, Kazi Publications, Lahore, Pakistan, 1979, Vol.9 hadith number 59, p46-47, also see Vol.2 hadith number 483, found on *e:\islamica\winhadis\winhadis.tex* and *e:\islamica\bukhari\bukhari.tex* on the CD Rom *islamica : Digital Library of Islamic Software*, Islamic Computing Centre, London, [www.ummah.org/icc ] also see Sachedina, Abdulaziz, A., in *Human Rights and the Conflict of Cultures*, Ibid., p98.

<sup>996</sup> Shafi'i, Muhammad Idris, *Kitab al-Umm*, (ed. by Muhammad Zahri a;-Najjar), Cairo, Egypt, no date given, Vol.VIII, p256, as cited by Ahmad, Syed Barakat, 'Conversion from Islam,' op.cit., p10 and in footnote 31 on p24.



*hadith* which portray the necessary information that is being required to be passed on, will depend – to a great extent – on the amount that is left to remain, or what is actually omitted. This all depends on the appropriate argument being put forward. Essentially, those in favour of supporting Abu Bakr's battle against the rebellious tribes, accused of being 'apostates,' will cite 'Umar's final agreement with this action as being the 'right decision', but those who aim to portray the objection of the fighting, as stated by 'Umar and other Companions of the Prophet, they will remove this final passage from the *hadith*.

Sachedina proceeds to emphasise that this tradition demonstrates the existence of a difference of opinion and some tension that was experienced between some prominent Muslim leaders in trying to resolve the issue of *zakat*. He suggests that this illustrated the politico-religious agreement between the Prophet and the tribes. One argument is inclined to identify that, according to this *hadith*, 'Umar leaned towards more agreement with the Arab tribes' position, as they had not appeared to have renounced the basic tenet of Islamic belief, that of *tawhid*, the unity of God. Sachedina suggests that this is indicated in 'Umar's concern for the guaranteed safeguard of the tribes, as long as they acknowledged the tenet of *tawhid*. Also, 'Umar separated *zakat* from the *al-shahadah* (declaring that there is no god but God). By doing this, he was "explicitly indicating that *zakat* was part of an agreement between the Prophet and the tribes which was cancelled by the Prophet's death."<sup>997</sup>

Sachedina raises the point that judging on 'Umar's statement, this implies that he preferred to make a remission for paying *zakat* after the Prophet died, as not paying it would not constitute a violation against either God or His Messenger. The Qur'an holds severe and understandable punishments for these acts. Therefore, 'Umar emphasised on his understanding that the tribes had not left their basic religious belief, and were obviously not threatening the authority in the Medina polity. However, contrary to this view, Abu Bakr held that Islamic public order was not restricted to be a small part of the community, but a complete jurisdiction covering the entire community. He concluded

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<sup>997</sup> Sachedina, Abdulaziz, A., in *Human Rights and the Conflict of Cultures*, Ibid., p98-99



that the tribes were not only disobeying God and his Messenger, but were simultaneously offering a challenge to the authority. As the authority in rule was acknowledged and accepted as the successor of the Prophet's role, Abu Bakr argued that the role held the right for maintaining the contracts that had been previously agreed upon. With the manner in which Abu Bakr treated the tribes, Sachedina concludes that it was "a clear instance of a political violation being punished as a violation against Islam as a politico-religious system, without any attempt at separating the two entities."<sup>998</sup>

This point supports the hypothesis of this thesis, because it can be seen here that the acts by the rebels were treason against the state but, unfortunately, they were only labelled as being apostates. The author of this thesis intends to emphasise that when physically attacking the authority, with the sole aim of changing the rulers of the state, this is a political act, and is very different to the theological sin of apostasy, when privately changing one's religion<sup>999</sup>.

Sachedina actually makes a connection here between the behaviour of Abu Bakr and the Christian approach to what is perceived to be heresy and apostasy. He argues that Abu Bakr's refusal to separate the *shahadah* (declaration of faith) and the *zakat* is very similar to the point made by Thomas Aquinas, who justified the use of force against any such heretics or apostates because, as Aquinas stated, they failed "to carry out what they promised and to hold what they once accepted."<sup>1000</sup>

Concerning the context and the content of the relevant *hadith*, as shown above, Sachedina bears in mind the fact that al-Bukhari's version may well have been potentially edited by the narrator. He suggests that this would be due to the fact that, when time moved on, there was a common tendency in portraying the more prominent early figures of Islamic rulers, clearly including both Abu Bakr and 'Umar, to almost 'idealize' them. Thus, this particular *hadith* seems to make them both agree with each other on the points that are

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<sup>998</sup> Ibid., p99

<sup>999</sup> This point is expanded on in detail, in the last section of this Chapter

<sup>1000</sup> The quote from Thomas Aquinas is given no source, but is cited by Sachedina, Abdulaziz, A., in *Human Rights and the Conflict of Cultures*, Ibid., p99



raised in it.<sup>1001</sup> He also argues that it is quite evident that the content of the *hadith* does not actually relate to the specific definition of apostasy as the “turning back from Islam.” The tribesmen involved, based on ‘Umar’s point of view, had not turned away from the basic level of Islamic tenets and the general belief system. They were, in fact, rebelling against the Islamic polity which provoked Abu Bakr to enhance the reaction of such behaviour as given in the Qur’anic verse of Surah *Al-Ma’ida*, verse 33-34:<sup>1002</sup>

The punishment of those who wage war against God and His Prophet, and who rampage about the land, pillaging and plundering and spreading corruption wherever they tread, is this: death by hanging, or crucifixion, or the cutting off of hands and feet from opposite sides, or, at the very least, exile from the land. This will be their humiliating punishment in this world; in the world to come a greater and far more humiliating punishment awaits them all - <sup>1003</sup>

In conclusion on his comments concerning this *hadith*, Sachedina suggests that it was a conflict of understanding between the Arab tribes and Abu Bakr based on the issue of the obligation of the tribesmen to pay their *zakat*. The tribesmen felt their tax-paying responsibility had been nullified, once the Prophet had died, whereas Abu Bakr was consistent in reiterating the tribesmen’s utter responsibility and obligation to pay the *zakat* if they wished to continue being members of the Islamic community. The refusal they gave, lead to the inevitable interpretation that they were threatening the stability and authority of an established Islamic governance and political order. Sachedina’s corollary is that “this was, therefore, not perceived as a question of apostasy at all, but of the obligations of membership in the Islamic community.”<sup>1004</sup>

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<sup>1001</sup> Ibid., p99

<sup>1002</sup> Ibid., p99

<sup>1003</sup> Turner, Colin, *The Quran: A New Interpretation*, Textual Exegesis by Mohammad Baqir Behbudi, Curzon Press, 1997, [*Al-Ma’ida*, Surah 5, verse 34], p62. The same verse is quoted as 5:36 in Ali, Abdullah Yusuf, *The Holy Qur-an* : Volume I, Ibid., p252-253 but as 5:33 in Mohammad Asad, in *The message of the Qur’an* Ibid., p148 and also as 5:33 in by Maulana Abdul Majid Daryabadi, *Tafsir-ul-Qur’an : Translation and Commentary of the Holy Qur’an*, (Preface dated as 1941), Islamic Book Foundation, Islamabad, Pakistan, p425 and 5:33 in by Maulvi Mohammad Ali, 1920, *The Holy Qur’an*, Ibid., p251

<sup>1004</sup> Sachedina, Abdulaziz, A., in *Human Rights and the Conflict of Cultures*, op.cit., p99-100



Another review of both this ‘Umar-Abu Bakr *hadith* and the situation at that time, is presented by Wensinck, who describes the position that the Islamic community was placed in, following the death of the Prophet Muhammad :

When the Apostle of Allah has departed this world and Abu Bakr had been appointed his vicegerent, and some of the Beduins [*sic*] had forsaken Islam, ‘Umar ibn Khattab said to Abu Bakr : How is it possible for thee to make war on these people, since the Apostle of Allah has said : I am ordered to make war on people til they say : There is no God but Allah? And whoever says : There is no God but Allah has thereby rendered inviolable his possessions and his person, apart from the duties which he has to pay. And it belongs to Allah to call him to account. Thereupon Abu Bakr answered : By Allah, I shall make war on whomsoever makes a distinction between the *salat* and the *zakat*. For the *zakat* is the duty that must be paid from possessions. By Allah, if they should withhold from me a string which they used to pay to the Apostle if Allah, I would make war on them on account of their refusal. Thereupon, ‘Umar said : By Allah, only because I saw that Allah had given Abu Bakr the conviction that he must wage war, did I recognise that he was right.<sup>1005</sup>

As already mentioned, this particular *hadith* is reported in various versions and has been subjected to thorough analytical assessment by Muslim scholars. One main factor within this report is that it focuses on the single *shahadah*, and the first part of it only, which declares: أَشْهَدُ أَنْ لَا إِلَهَ إِلَّا اللَّهُ وَأَشْهَدُ أَنَّ مُحَمَّدًا رَسُولُ اللَّهِ – *la ilaha illa llah* (There is no god but God). This is significant, as it promotes the desire for a person to declare their genuine faith as a being a true Muslim, by publicly admitting their devotion and commitment to the *tawhid* (Oneness) of God alone, which is stated by the first part of the *shahadah*. Thus, this *hadith* does not mention the second part, which declares an acknowledgement that Muhammad is the true Messenger of God. Therefore, it becomes apparent that as long as a person makes this statement of *tawhid*, then it is prohibited for any other Muslim to attack the person or damage any of their possessions.

<sup>1005</sup> Wensinck, A.J., *The Muslim Creed*, op.cit, p13-14. Also see Kister, op.cit., p41



Several other *hadith* also promote this view, declaring that in stating the first section of the *shahada* it is suffice enough, in order to prevent people who make this expression to be fought and attacked against by Muslims. One example explains this policy, as :

If one of you draws the spear against a man and the spearhead reaches already the pit of his throat, he has to withdraw it if the man utters the *shahadah* of *la ilaha illa llah*.<sup>1006</sup>

There are other such *hadith* that support this theme, including one particular *hadith* where a believer presents a hypothetical scenario to the Prophet Muhammad, and requests what should a believer do in reaction to such a scene, should it exist. The reaction of the Prophet was always to present advice which promotes utter tolerance to all Muslims, even at the point of holding a spear to the throat of a perceived enemy would be not to kill them, should the person declare the *shahadah*.

In one *hadith*, it ends by citing the Prophet who clearly announces that “I have been merely ordered to make war on people until they say *la ilaha illa llah* : when they do, their blood and possessions are inviolable by me.”<sup>1007</sup> As Kister points out from this *hadith*, another important factor can be seen, which moves even further along the path of tolerance and the highest levels of acceptance that the Prophet’s words project for Muslims to hold with others who proclaim the *shahadah*. Kister raises the observation that :

It is noteworthy that the phrase of exception *illa bi-haqqiha* is not recorded in this version. It is however recorded by al-Tahawi and by Ibn Majah himself in two other traditions recorded by him.<sup>1008</sup>

This shows rather clearly that certain confusion can arise if *ahadith* have various versions and different interpretations. Some commentators suggest that the version presented here proclaims that the announcement of *tawhid* (the Oneness of God) alone is enough to prove a person’s genuine conversion to Islam. However, other commentators disagree

<sup>1006</sup> Kister, Ibid., p42 This *hadith* is recorded by Al-Muttaqi al-Hindi, *Kanz al-'ummal*, Hyderabad, 1364AH, Vol. I, *hadith* no.369, p38-41

<sup>1007</sup> Kister, Ibid., p42 This *hadith* is recorded by Ibn Majah, *Sunan al-mustafa*, Cairo, 1349AH, Vol. II, p458

<sup>1008</sup> Kister, Ibid., p42 This *hadith* is recorded by Ibn Majah, *Sunan al-mustafa*, Ibid., p458 and also At-Tahawi, *Sharh ma'ani l-athar*, ed. Muhammad Zuhri l-Najjar, Cairo, 1388AH/1968AD, Vol. III, p213



with this view, as they state that the first part of the *shahada* implies the acceptance of the second part, which declares that the Prophet Muhammad is God's Messenger. Kister argues that such commentators believe that:

the *hadith* in the recorded version is merely an allusion (*kinaya*) to the open announcement of conversion to Islam (*izhar shi'ar al-Islam*) and includes in fact the *shahada* about the prophethood of Muhammad and the acceptance of the tenets of his faith.<sup>1009</sup>

Therefore, there is inconsistency as to what is – and what is not – accepted as a legitimate conversion to Islam, because some other commentators declare even more diverse interpretations of the single *shahada*. These commentators :

maintained that the utterance of the *shahada* itself did not indicate conversion to Islam; it merely indicated a renunciation of the former belief. It could however, not be concluded that they had embraced Islam; they might have joined another monotheistic faith which, though attesting the oneness of God, is yet considered unbelief (*kufr*).<sup>1010</sup>

There is one positive aspect to this interpretation, as it was also accepted that :

As a result it was necessary to suspend fight [*sic*] against such people until it was made clear that there was an obligation to make war on them. It could thus be deduced that this tradition refers to polytheists, who had to utter the *shahada*.<sup>1011</sup>

If this interpretation is to be accepted as a valid view, then polytheists can obviously not be seen as 'apostates' from Islam, as they are outside the Islamic faith in the first place. Therefore, any battle against such people would not have been a battle against *Al-ridda* – 'apostasy,' but would have been a state authorities reaction against sedition and treason, to defeat a rebellious campaign.

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<sup>1009</sup> Kister, *Ibid.*, p42

<sup>1010</sup> *Ibid.*, p43



### 4.3 Questions that need to be addressed.

Khan presents some relevant points of view and perspectives, that raise questions which need to be addressed. These issues of concern are; if the apostates had *not* been active, rebellious renegades, then “why is it that leading Refugees and Helpers urged Hazrat Abu Bakr that he should detain the force which was ready to march north under the command Usamah ibn Zaid<sup>1012</sup> as the security of Medina was threatened by the apostates?”<sup>1013</sup> Another question Khan raises, is ‘why had Usamah then begged with Hazrat Umar, that Usamah should go and seek aid from Hazrat Abu Bakr, to persuade him to allow permission that Usamah could return to Medina?’ The reasons offered by Usamah for such a request was that the army under his command included many prominent Muslims. It can be argued that he was reluctant to leave Medina, allowing Abu Bakr, as the Caliph, the wives of the Prophet and the Muslim community as a whole, to be placed in a vulnerable position, should the apostates attack Medina while the army was absent.<sup>1014</sup>

Tabari<sup>1015</sup> recorded that “Abs [*sic*] and Zeeban[*sic*] were the tribes who were the first to attack Medina and Hazrat Abu Bakr fought them before the return of Usamah.”<sup>1016</sup> Khan also quotes from Ibn Khalladun<sup>1017</sup> who also states that “Abs [*sic*] and Zeeban[*sic*] were the first to attack Hazrat Abu Bakr and the others collected together at Zil Qassah.”<sup>1018</sup> The third source of the work by Khamees<sup>1019</sup> is also used, which presents an example of an active apostate, Kharajah bin Hasan, and the level of hostility and aggression that he provided :

Kharajah bin Hasan, who was one of the apostates, advanced upon Medina with some mounted men of his tribe so as to deliver his attack unexpectedly before the Muslims

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<sup>1011</sup> Kister, Ibid., p43 Also see At-Tahawi, *Sharh ma‘ani l-athar*, Ibid., Vol. III, p213

<sup>1012</sup> As mentioned above, this was the army expedition sent to the Syrian border, led in command by Usama ibn Zayd ibn Harith, which departed two days after Abu Bakr was announcement as the Caliphate.

<sup>1013</sup> Khan, Muhammad Zafrullah, *Punishment of Apostasy in Islam*, op.cit., p41-42

<sup>1014</sup> *ibid.*, p42

<sup>1015</sup> Muhammad Zafrullah Khan does not provide the full name of “Tabari,” he just quotes the name in this form.

<sup>1016</sup> “Tabari, Vol. IV, p1873” as cited by Khan, Muhammad Zafrullah, *ibid.*, p42

<sup>1017</sup> Muhammad Zafrullah Khan does not provide the full name of “Ibn Khalladun,” he just quotes the name in this form.

<sup>1018</sup> “Ibn Khalladun, Vol. II, p65” as cited by Khan, Muhammad Zafrullah, *ibid.*, p42

<sup>1019</sup> Muhammad Zafrullah Khan does not provide the full name of “Khamees,” he just quotes the name in this form.



emerged from Medina to oppose him. Thus, he attacked Abu Bakr and those Muslims who had been left and took them unawares.<sup>1020</sup>

These points are also raised by Syed Barakat Ahmad in his work 'Conversion From Islam.' Abu Bakr al-Siddiqi's main mission was to pursue the deviants through his *al-ridda* campaign, to suppress them. The very first task he ordered, following the command of the Prophet before his death, was to send out an army expedition to the Syrian border, which departed two days after the announcement of Abu Bakr as the Caliph. The expedition was under the command of Usama ibn Zayd ibn Harith, and following the group's departure, a great deal of the Arab tribes started to leave Medina. Those who remained loyal to their leaders, remained in and around Mecca and Medina. The Muslim agents from the rebellious tribes, whom the Prophet had appointed into that position as guides for their tribes, then fled from them, returning to Medina. "It was a full-fledged revolt."<sup>1021</sup>

Abu Bakr saw this as a rebellious manoeuvre and decided to fight them to 'encourage' their return. He sent out messengers to the tribes that had remained loyal and summoned for their support to protect the numbers of believers in Islam. While waiting for the supporters to appear, Kharja ibn Hin, led by 'Unayna ibn Hisn al-Fazari and also by al-Aqra' ibn Habis al-Tamimi undertook a surprise attack upon the Muslims. Those under attack dispersed in confusion, but then reassembled and counter-attacked the men under Kharja ibn Hin, and won the battle.

Before a fight that occurred at Dhu 'l-Qassa, a group of the 'rebellious' tribe leaders went to visit Abu Bakr in Medina, to negotiate the issue of their refusal in paying *zakat*, but Abu Bakr rejected any negotiation. This is assessed by Syed Barakat Ahmad, in his work *Conversion from Islam*, as :

Abu Bakr refused to parley. Several prominent *muhajirun* disagreed with Abu Bakr's decision to fight the withholders of *zakat*. The fact that these tribes were anxious to negotiate

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<sup>1020</sup> "Khamees, Vol. II, p237" as cited by Muhammad Zafrullah Khan, *ibid.*, p42

<sup>1021</sup> Ahmad, Syed Barakat, *Conversion from Islam*, *ibid.*, p9



indicates that they had not recanted, and did not want to sever their relations with Medina's control over them. The issue was not belief in Allah and His Prophet, but rather the tax imposed on them (*zakat*).<sup>1022</sup>

Relating to this meeting of the tribal leaders with Abu Bakr, Al-Tabari states that when the delegation of tribal leaders had left Medina, Abu Bakr called a meeting for the Muslim community there announcing that :

The delegation has observed the smallness of your numbers in Medina. You do not know if they will attack you by night or by day. Their vanguard is only one day's journey from Medina. They wished for us to accept their proposals, and to make an agreement with them, but we have rejected their requests. So make ready for their attack. [Within three days they attacked Medina.]<sup>1023</sup>

The conclusion of this situation is made clear by Muhammad Zafrullah Khan who argues that the apostates were the initial attackers against the Muslims within Medina, in the aim that they may then control Medina, and the small number of believers living there. However, they could not overcome the Muslims and lost the battle. Khan believes that the tribes who had apostatised had begun their rampage of violence and aggression, and began this episode as soon as they had discovered the death of the Prophet Muhammad. When the news of his death had reached the tribes, it is argued that they immediately began killing members of their tribes who still remained devout and sincere Muslims. This has also been recorded by Ibn Khalladun who argued that the Abs and Zeeban tribes, on hearing such news, started the attacks on believers within their tribes, and the same occurred within other tribes, simultaneously.<sup>1024</sup> This same information is also recorded by Tabari, who argued that these two tribes, the Abs and Zeeban, along with several other tribes, massacred those who adhered to Islam and refused to revert to polytheism.<sup>1025</sup>

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<sup>1022</sup> Ibid., p9

<sup>1023</sup> Al-Tabari, *Ta'rikh al-rusul wa'l-muluk*, ed. by M. J. de Goeje, Leiden, The Netherlands, 1964, Vol.IV, p1874, as cited by Ahmad, Syed Barakat, 'Conversion from Islam' *ibid.*, p10 and in footnote 32 on p24.

The exact same quote is also cited in Khan, Muhammad Zafrullah, *op.cit.*, p42

<sup>1024</sup> "Ibn Khalladun, Vol.II, p66" as cited by Khan, Muhammad Zafrullah, *ibid.*, p43

<sup>1025</sup> "Tabari, Vol.IV, p1817" as cited by Khan, Muhammad Zafrullah, *ibid.*, p43



Khan argues that, based on this information, the implication would suggest quite strongly that :

Thus, it is clear that those tribes had repelled openly against the authority of the Islamic state, they slaughtered the Muslims and were determined to wipe them out and to destroy the Islamic state and Islam itself. *The advocates of the penalty of death for simple apostasy can derive no support for such instances.* Their recourse to these instances shows that they can find nothing relevant in support of their thesis.<sup>1026</sup>

[Italics added in by thesis author, for emphasis]

He furthers this explanation with two considerations that can offer an understanding of the reasons why the attacks on Medina by the tribes, were unsuccessful. Firstly, the attacks were subdued because of the defense they confronted by Abu Bakr as-Siddiq and the Muslim community as a whole, and this would have discouraged any further attacks. The second consideration would be based on the movement of the armed forces heading north, under the command of Usama ibn Zayd ibn Harith. This would have created a powerful illusion upon the attacking tribes, who would see that the Muslims were a very formidable and an organised opposition, having defended Medina, while simultaneously, having sent out a large, armed group of men, who were obviously away from Medina when the attacks had taken place.<sup>1027</sup>

This point is reiterated in the work *Tarikhal Kamil*,<sup>1028</sup> which states that :

The despatch of the army under the command of Usamah was an event which proved of the greatest benefit for the Muslims, inasmuch as the apostate tribes imagined that if the Muslims had not been in a position of great strength, they would not have dispatched the army to the north in the situation with which they were faced. Under this impression, they held back from putting their evil designs into effect.<sup>1029</sup>

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<sup>1026</sup> Khan, Muhammad Zafrullah, *ibid.*, p43

<sup>1027</sup> Khan, Muhammad Zafrullah, *ibid.*, p43

<sup>1028</sup> No author of this work is provided by Muhammad Zafrullah Khan, just the title and volume number of the book as *Tarikhal Kamil*.



Khan concludes that, having assessed the behaviour of the tribes during their confrontation with Abu Bakr and their refusal to pay the *zakat*, the factors involved go a little further than this. He argues that what can be seen in the manner in which they dealt with their approach to Islam and the Muslim Community, it “makes it clear that the Arab tribes had not only repudiated Islam, but they had all rebelled against the Islamic state and they were determined to wipe out the Muslims altogether.”<sup>1030</sup> He continues the support of Abu Bakr’s campaign of *Al-Ridda*, on the basis that “Had Hazrat Abu Bakr not used force against the apostate tribes, there would have survived no Muslim and no Islam.”<sup>1031</sup>

As Syed Barakat Ahmad describes, the war of *al-ridda* caused immense levels of bloodshed and has been explained by another scholar that: “it was inexplicable to the subsequent historians of the Arabian State that after the death of Mahomet so many wars were necessary on Arabian soil; they accounted for this fact by a *ridda*.”<sup>1032</sup> Ahmad then postulates that, as the rebellious tribes were perceived to be part of a religious movement against Islam, the jurists of the following generations :

who failed to find a precedent in the Qur’an or the sunna for capital punishment in the case of a Muslim accused of *kufr*, or waging war against a Muslim power, accepted this assumption without further examination.<sup>1033</sup>

Assessing the legal position of Abu Bakr’s campaign against the Muslim rebels during *al-ridda*, this next citation from Muhammad Idris Shafi’i is appropriate, as it links quite well with the legal definition of apostasy: “*Ridda* is falling back from a previously adopted religion into disbelief, and refusing to fulfill previously accepted obligations.”<sup>1034</sup> Concerning the fulfilment of ‘previously accepted obligations,’ Syed Barakat Ahmad argues that this indicates that recantation alone is not enough, because the recantation

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<sup>1029</sup> “*Tarikh al Kamil*, Vol.II, p139” as cited by Khan, Muhammad Zafrullah, *ibid.*, p44

<sup>1030</sup> Khan, Muhammad Zafrullah, *ibid.*, p44

<sup>1031</sup> *Ibid.*, p44

<sup>1032</sup> Becker, C.H., ‘The Expansion of the Saracens’ in *The Cambridge Medieval History*, 1913, New York, II, p335, as cited by Ahmad, Syed Barakat, *Conversion from Islam*, *ibid.*, p10 and in footnote 33, on p24

<sup>1033</sup> Ahmad, Syed Barakat, *ibid.*, p10

<sup>1034</sup> Shafi’i, Muhammad Idris, *Kitab al-Umm*, op.cit., Vol.VIII, p255-p256, as cited by Ahmad, Syed Barakat, ‘Conversion from Islam’ *ibid.*, p10 and in footnote 34 on p24.



must also be connected to aggravation in the breach of the agreement that had been undertaken through an oath. He cites from the work of the jurist 'Abd al-Hamid Hibat Allah Ibn al-Hadid, in his work *Sharh Nahj al-Balaghah*, who presents another perspective in this theory :

Ibn Abi'l-Hadid, a scholar of a very different school, in his commentary on the *Nahj al-Balaghah*, clarifies the entire situation with the following comment : those tribes which refused to pay the *zakat* 'were not recanters, but were so called by the Companions of the Prophet by way of metaphor.'<sup>1035</sup>

Bernard Lewis also makes the point that the refusal of paying *zakat* after the death of the Prophet, the whole episode of *Al-Ridda* "represents a distortion of the real significance of events by the theologically coloured outlook of later historians."<sup>1036</sup> Lewis goes into further analysis of the reasons behind why the tribes refused to accept the *zakat* as an integral part of the Islamic faith. The tribes understanding was that the contract was made with them and the Prophet, not Allah, therefore on his death, the contract between them had terminated. As Lewis explains :

The refusal of the tribes to recognise the succession of Abu Bakr was in effect not a relapse by converted Muslims to their previous paganism, but the simple and automatic termination of a political contract by the death of one of the parties. The tribes nearest to Medina had in fact been converted and their interests were so closely identified with those of the Umma that their separate history has not been recorded. For the rest, the death of Muhammad automatically severed their bonds with Medina, and the parties resumed their liberty of action. They felt in no way bound by the election of Abu Bakr in which they had taken no part, and at once suspended both tribute and treaty relations. In order to re-establish the hegemony of Medina, Abu Bakr had to make new treaties.<sup>1037</sup>

This leads to an interesting comparison that al-Khattabi makes of how the treatment by Abu Bakr to those who refused to pay *zakat* at that time, would differ somewhat to the

<sup>1035</sup> Ibn al-Hadid, 'Abd al-Hamid Hibat Allah, *Sharh Nahj al-Balaghah*, ed. by Muhammad Abu 'l-Fadl Ibrahim, Cairo, Egypt, 1956-64, Vol.XIII, p187, as cited by Ahmad, Syed Barakat, 'Conversion from Islam' *ibid.*, p10-11 and in footnote 35 on p24.

<sup>1036</sup> Lewis, Bernard, *The Arabs in History*, London, 1958, p51-52.



treatment towards those who would refuse to pay *zakat* now. Al-Khattabi stated that Abu Bakr's aim and purpose was an attempt to compel the rebellious groups to see their wrong and pay their *zakat*, as their obligation. However, he also announced that :

The leniency shown towards them took into consideration their ignorance since they had been in Islam only for a short period. But a group who would deny *zakat* nowadays would be considered as falling into unbelief and apostasy and the apostate would have to be killed.<sup>1038</sup>

Kister further postulates that the discussion and consideration of whether it had been lawful and legitimate for Abu Bakr to have undertaken the *al-ridda* attacks of both fighting and defence, actually would have evolved some time after the event. He considers that the defence of the wars would have been raised not only to portray this response in a very positive manner, but defending them would evaluate the reasons for why the battles had been valid. Abu Bakr had chosen to fight the challenge that had been presented to him by the rebellious tribes. Such praising for Abu Bakr in this manner, was far more than being just a historical description of past events, but more so, it was used to defend the same approach for dealing with any 'opposition' of the Islamic authorities. When stating that Abu Bakr's *hurub al-riddah* episode had been the implementation of the word of the Qur'an, this can be argued to be strategic, as a way in :

providing convincing proof that his action was in accordance with the prescriptions and injunctions of the Qur'an and with the *sunna* of the Prophet. The precedent of Abu Bakr had to serve as an example for dealing with similar cases of revolt in the contemporary Muslim Empire.<sup>1039</sup>

#### **4.4 The difference between the Sunni and Shi'a approaches**

The Sunni approach towards assessing Abu Bakr's policy is set out by al-Hasan al-Basri, which was recorded by Abu Sukayn (d.251AH). Al-Hasan al-Basri assesses several events in the history of Islam, and argues that when Abu Bakr undertook the confrontation of *al-riddah* it became a significant move towards establishing a secure

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<sup>1037</sup> Ibid., p51-52.

<sup>1038</sup> Kister, M. J., op.cit., p38. Also see Ibn Kathir, *Tafsir Al-Qur'an*, Beirut, 1385AH/1966AD, Vol.III, p488

<sup>1039</sup> Kister, M. J., ibid., p38



Islamic community.<sup>1040</sup> Abu Bakr is argued to have requested from the Prophet's Companions what form of action he was to take. All the Companions are recorded to have advised Abu Bakr to accept the rebellious tribes commitment to prayer, and acknowledge they would refuse to pay the *zakat*. Abu Bakr's reply is that well known expression, when he "insisted and swore that if they withheld even one string which they had been in the habit of paying to the Messenger of Allah, he would fight them."<sup>1041</sup>

One very interesting point to be raised here, is that the credit and admiration that is attached to Abu Bakr for having established that paying *zakat* is an obligation, cannot be found within Shi'a commentaries on the Qur'an. Within Shi'a belief, it is still held true that the payment of the *zakat* is a basic and fundamental injunction that applies to every believer. However, the privilege as a right for the cleansing/purification pertaining to the Prophet Muhammad in verse 9:103, was transferred over to be the prerogative of the Imam, within Shi'a belief. This understanding focuses on the community being in need of the imam, in order for them to present him their alms, so he may reciprocate the alms with purification. However, it is also stated clearly within Shi'a belief, that the imam does not need to receive the community's money or property. This point is strongly defended by the suggestion that "anyone who claims that the imam is in need of the wealth of the people is a *kafir*."<sup>1042</sup> Returning to the Sunni perspective which supports the concept that the decision taken by Abu Bakr to fight the *ahl al-riddah* was correct, and this view is based on the interpretation of the Qur'anic verse 5:54, where the :

Sunni tradition states that the revolt and Abu Bakr's steps are foretold in the revelation of the Qur'an (Sura V:54) : 'O believers, whosoever of you turns from his religion God will assuredly bring a people He loves and who love Him'.....The people whom God loves and who love God refers to Abu Bakr and the men who aided him in the struggle against the *ridda* revolt.<sup>1043</sup>

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<sup>1040</sup> Ibid., p39

<sup>1041</sup> Ibid., p39

<sup>1042</sup> Ibid., p40

<sup>1043</sup> Ibid., p40



A view supporting this interpretation is expressed in the work of ‘Abd al-Jabbar, who dismisses any legitimacy by the juxtaposed “claim of the *zanadiqa*, that Abu Bakr was an apostate.”<sup>1044</sup> Concerning the view held by the Shi’a tradition, when focusing on the verse 5:54, they maintain that the understanding of the verse is that it represents the Caliph ‘Ali, and those who followed him, hence reference to the people who love God and those reciprocated with love from God. Shi’a belief argues that ‘Ali and his adherents were thus, ordered to fight all those who were understood to have broken their vows with the Islamic community. The different groups attacked include those tribes who broke their allegiance (*al-nakithin*), which would include the tribes Talha and al-Zubayr; those who strayed away from believing in true Faith (*al-mariqin*, i.e. the *khawarij*) and those who are seen as being the “unjust” (*al-qasitin*, i.e. Mu‘awiya and those who followed him.)<sup>1045</sup>

It has been argued by Kister that various interpretations by the commentaries undertaken on the Qur’an, can enable a variety of views concerning the reasons underlying the *riddah* revolt. The commentaries also present an appraisal of Abu Bakr’s decree for fighting the rebellious tribes and whether this could be defended as legitimate, through relevant areas of *Shari’ah*, by “emphasising his sound judgement, his courage and devotion to the faith of Islam.”<sup>1046</sup>

It is a possible conclusion that the *rida* undertaken was due to tribes having decided to split away from the authority based in Medina, and not from Islam as a religion. This view can be defended by the fact that the majority of the tribes still worshipped Allah and respected His Messenger, but they simply refused to pay money through the tax of *zakat*. It has been argued by a group of Western scholars<sup>1047</sup>, that the tribes being fought by Abu Bakr throughout *hurub al-rida* were not a religious movement recanting and repelling Islam. The scholars argue that the wars were based on a political agenda. To summarise

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<sup>1044</sup> Ibid., p40

<sup>1045</sup> Ibid., p41

<sup>1046</sup> Ibid., p41

<sup>1047</sup> The three Western scholars referred to are, Becker, C. H., Caetani and Wellhausen, but the full names of these scholars were not presented, only the family names here.



this position, in reference to the Prophet with his name as Mahomet, before he became Muhammad, the scholars argue that *hurub al-ridda* arose due to :

The sudden death of Mahomet gave new support to the centrifugal tendencies. The character of the whole movement, as it forces itself on the notice of the historian, was of course hidden from contemporaries. Arabia would have sunk into particularism if the necessity caused by the secession of *al-Ridda* had not developed in the State of Medina an energy which carried all before it. The fight against the *Ridda* was not a fight against apostates; the objection was not to Islam *per se* but to the tribute which had to be paid to Medina; the fight was for the political supremacy over Arabia.<sup>1048</sup>

As a final summary of the whole events of that time, following the death of the Prophet Muhammad and the battles undertaken by Abu Bakr, the more acceptable reason for the death penalty to have become attached to the act of apostasy – and then having become established in *Shari'ah* – seems to have developed, and to have derived from certain weak *ahadith*, and can certainly not be related to the genuine message of the Qur'an. The important points to be considered on this issue can be unequivocally seen in Hallaq's synopsis of what are presently perceived to be named as *hurub al-ridda* – *The War of Apostasy*. Hallaq argues that :

It is highly probable that the events making up the so-called wars of apostasy, together with their fundamental impact upon the collective Muslim psyche, generated a new element in the attitude toward apostasy. Being largely a reflection of the post-Prophetic experience, hadith – the reports that are believed to document the words and deeds of the Prophet – stipulate, at variance with the Qur'an, that the apostate should be punished by death. To be sure, this stipulation reflects a later reality and does not stand in accord with the deeds of the Prophet. In fact, if we go by what seems to be reliable information about Muhammad, the Qur'an emerges as a more accurate representation of his attitude toward apostasy. It is more likely that Abu Bakr was the first to be involved in putting to death a number of apostates, an action which was in the course of time perceived as the practice (*sunna*) of the Prophet. Later sources sanctioned this penalty and made a point in

<sup>1048</sup> Becker, C. H., 'The Expansion of the Saracens', op.cit., Vol. II, p335, as cited by Ahmad, Syed Barakat, op.cit., p11 and in footnote 36 on p24.



mentioning that the other Companions approved of Abu Bakr's action.<sup>1049</sup>

The important conclusion that is offered here, concerns that the reason for the battles entitled as *hurub al-ridda*, should not be focused, so much, on the refusal of the tribes to pay the *zakat*. A far more relevant approach should be the analysis of the violent manner in which the tribes refused. Although Hallaq's argument of repudiation and the renouncement of Islam by the tribes differs somewhat - and is juxtaposed – to that offered by Abdulaziz Sachedina, both scholars conclude, at least, that the death penalty for the act of apostasy cannot be based on the events concerning *hurub al-ridda* and this also cannot be used as being the reason for defending such a legal sentence. Khan quotes from '*Amdat-ul-Qari*, the work by Al-'Aini<sup>1050</sup>, as a summary of the circumstances that created *hurub al-ridda* :

As Aini [*sic*] has observed : 'Hazrat Abu Bakr fought those who had refused to pay the *zakat* because they had taken up the sword and had started hostilities against Muslims.'<sup>1051</sup>  
This shows clearly that the apostates were the aggressors. They not only refused to pay the *zakat*, but took up the sword against the Muslims and thus commenced hostilities.<sup>1052</sup>

Khan emphasises that the acts that were implemented, were not that of 'simple apostasy,' as there was a rebellious movement that involved the killing and mutilations of Muslims within each tribe, including some Muslims being burnt alive.<sup>1053</sup> Tabari also makes relevant comments on these conditions and the activities undertaken by the apostate tribes during *hurub al-ridda*. He observes that :

When the Bani Asad, Ghatafan, Hawazan, Bani Sulaim and Bani Tai were finally vanquished, the Muslim commander, Khalid bin Waleed, refused to grant them an amnesty till [*sic*] they would produce before him those who, after their

<sup>1049</sup> Hallaq, Wael, 'Apostasy' in *Encyclopaedia of the Qur'an*, op.cit., p121

<sup>1050</sup> Muhammad Zafrullah Khan does not provide the full name of "Al-'Aini," he just quotes the name in this form.

<sup>1051</sup> "Al-'Aini, '*Amdat-ul-Qari*, Vol.XI, p236" as cited by Muhammad Zafrullah Khan, op.cit., p44

<sup>1052</sup> Khan, Muhammad Zafrullah, *ibid.*, p44

<sup>1053</sup> *Ibid.*, p44-45



apostacy, [*sic*] had burned the Muslims alive, had mutilated them and had otherwise tortured them.<sup>1054</sup>

The actions also involved removing the official ‘functionaries’ placed within each tribe by the Prophet, as the Islamic community ‘representative.’ Some of the apostate tribes, having expelled or killed these people, then attempted to set up their own autonomous governments. Ibn Khalladun wrote that “The Banu Rabia became apostates and appointed Munzar bin Numan as their ruler.”<sup>1055</sup>

The conclusion of the points raised in this Chapter can be summarised quite well by Muhammad Zafrullah Khan. He asserts an unequivocal declaration against those who argue that the death penalty is a legitimate legal sentence for people who undertake simple, passive, private apostasy. Khan declares that :

It is, therefore, utterly untrue that the fighting of the apostates by the Muslims in the time of Abu Bakr lends any support to the thesis that simple apostasy is punishable with death in Islam. Those who make such a claim are either ignorant of the early history of Islam or they deliberately seek to mislead.<sup>1056</sup>

#### **4.5 The difference between Apostasy and Treason.**

Nasr Hamed Abu Zeid is a Qur’anic scholar from Egypt who was convicted of apostasy in 1995. His case is assessed in Volume Two of this thesis, but it is relevant to use a quote from him here, because the point he makes highlights the need for a very distinct separation in Islam defining the difference between the political act of ‘treason’ and the theological sin of ‘apostasy’ :

They [the Islamists] want to link religious apostasy with the crime of betraying the nation; and so, they ignore an essential distinction: the freedom of human beings to choose their religion – a freedom upheld by the Qur’an –

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<sup>1054</sup> “Tabari, Vol. IV, p1900” as cited by Khan, Muhammad Zafrullah, *ibid.*, p45

<sup>1055</sup> “Ibn Khalladun, Vol.II, p76” as cited by Khan, Muhammad Zafrullah, *ibid.*, p45

<sup>1056</sup> Khan, Muhammad Zafrullah, *ibid.*, p45



and ‘treason’ aimed at harming the modern nation for the benefit of its enemies.<sup>1057</sup>

Clarifying that by definition apostasy differs from treason indicates that there has been a misunderstanding based on the assumption that the act of a person simply leaving their religion is equal to the act of physically rebelling against the state authorities. Although the same behaviour is rebellious, in the terms of rejecting the set rules, there is still a dramatic difference between the two forms of rejection. Apostasy is the passive change of a person’s religion, and is not the same as undertaking murder, arson or rape, in order to cause public disorder and to attempt a coup d’état, or a coup de main against the authority who rule the community. Therefore, a precise definition of each form of act will show where a misguided use of the words portray the apostate as a person who has undertaken a crime they have not either technically, or practically, committed.<sup>1058</sup>

The word apostasy derives from ἀπόστασις – *apostasis*, which is the Greek word for ‘defection,’ or ‘desertion’.<sup>1059</sup> Although ἀπόστασις has been defined as a “revolt,” in the *Greek-English Lexicon*, it is always placed in one specific context, with the word representing a person’s “rebellion against God; apostasy”<sup>1060</sup> In this definition it could also portray the αποστάτης (apostate) as becoming an atheist, as opposed to joining another monotheistic religion, as they rebel against believing in God, compared to changing the religious path in following their faith. However, this definition still reinforces the argument that the act of apostasy does not involve the acts that are separately categorised as being the ‘rebellion against the state.’ The latter acts are of

<sup>1057</sup> Abu Zeid, Nasr Hamid, ‘Met al Rijal wa Bada’at Muhakamatuh,’ in *Adab wa Naqd*, no.101, January 1994, p67, as cited and translated from Arabic into English by Hirschkind, Charles, ‘Heresy or Hermeneutics: The Case of Nasr Hamid Abu Zayd’ in *The American Journal of Islamic Social Sciences*, jointly published by The Association of Muslim Social Sciences and The International Institute of Islamic Thought, no place or publisher provided, Vol.12, No.4, Winter 1995, p473 and in footnote 38

<sup>1058</sup> O’Sullivan, Declan, ‘Egyptian Cases of Blasphemy and Apostasy against Islam: *Takfir al-Muslim* (Prohibition against Attacking those Accused)’ in *The International Journal of Human Rights*, Frank Cass Publishers, Vol., 7, No.2, 2003, p.125

<sup>1059</sup> This also leads to the word αποστάτης – *apostates* (singular), who is the person who is defecting, or is a deserter. Sykes, J.B. (Ed.), *The Concise Oxford Dictionary of Current English*, 1988, The Oxford University Press, Oxford, p40. Also see O’Sullivan, *ibid.*, p125

<sup>1060</sup> Liddell, Henry George and Scott, Robert (compiled by), *A Greek-English Lexicon*, Oxford University Press, (Clarendon Press), Oxford, 1940, (updated version of the original manuscript of 1843), p218. Also see O’Sullivan, *ibid.*, p125



treason, and involve a political dispute, whereas apostasy involves religion, and involves a theological dispute. A theological dispute with questioning a person's belief in God does not include physical violence, but is only a cluster of theological and philosophical turbulence and turmoil for the apostate. The former, treason, is the cataclysm that deliberately causes a cluster of physical disturbance and the disorder in society, by creating the deliberate pandemonium of commotion.<sup>1061</sup>

**Treason:** is defined as the violation by a subject of allegiance to sovereign or to the chief authority of the State, by either plotting the sovereign's assassination or by engaging war against him. It is also defined as the breach of faith and disloyalty.<sup>1062</sup>

**Traitor** is defined as a person who is false to their allegiance, or acts disloyally to either their country, king, cause, religion, principles, or themselves).<sup>1063</sup>

**Sedition** is the agitation against the authority of a State; by either conduct or speech that tends towards rebellion or the breach of public order."<sup>1064</sup>

A **Quisling** is a person who co-operates with an enemy who has occupied their country. The word derives from the family name of Vidkun Quisling (1887-1945), a renegade Norwegian army officer, who became the Norwegian Minister of Defense from 1931 to 1933. He collaborated with the Nazis during World War II. His name became established as a generic term for 'traitor', in reference to someone who collaborates with the invaders of their country, and especially by serving for the invaders in a 'puppet government'. He then left the Agrarian political party to found the fascist *Nasjonal Samling* (national unity) party and in 1940 he collaborated with Germany, aiding them to prepare for their invasion and conquest of Norway. In May, 1945, after the Germans had surrendered in

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<sup>1061</sup> O'Sullivan, *ibid.*, p125-126

<sup>1062</sup> Sykes, J.B. (Ed.), *The Concise Oxford Dictionary of Current English*, op.cit., p1141. Also see

O'Sullivan, *ibid.*, p126

<sup>1063</sup> Sykes, *Ibid.*, p1136. Also see O'Sullivan, *ibid.*, p126

<sup>1064</sup> Sykes, *Ibid.*, p951. Also see O'Sullivan, *ibid.*, p126



Norway, Quisling was arrested, taken to court and convicted of high treason. He was shot dead as the punishment for treason.<sup>1065</sup>

**Apostasy** is defined as the abandonment of religious faith, vows, principles, or political party allegiance.<sup>1066</sup>

Understanding the words in this definition can clarify the characteristics under which this form of 'rebellion' is restricted to.

**Abandonment** is defined as giving up, or forsaking; being forsaken; the careless freedom of manner, acting by impulsiveness.<sup>1067</sup>

**To Abandon:** is also the careless freedom of manner, by letting oneself go from what is accepted as the norm.<sup>1068</sup>

**Forsaken** : is defined as to give up, break off from, renounce, withdraw from either one's help, friendship, or companionship; to desert, abandon.<sup>1069</sup> Of particular importance to this research, is the use of the word renounce.

**Renounce** is to repudiate, in refusing to recognise and accept, by declining any association; to disclaim a relationship with, or withdraw from; by discontinuing; to forsake<sup>1070</sup> The word 'desert' is used in definition of 'forsaken,' **Desertion** is to abandon, give up something, to depart from a place; to run away (especially from service in the armed forces), hence the word 'deserter' derives from it.<sup>1071</sup>

**Defection:** is defined as falling away from the allegiance with a either leader, a political party, a religion, or a duty; desertion means to leave, and often refers to a person who moves away to another country in order to physically leave what they reject.<sup>1072</sup>

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<sup>1065</sup> Sykes, Ibid., p848. Also see *Hutchinson Encyclopaedia* on: <http://www.tiscali.co.uk/reference/encyclopaedia/hutchinson/m0007693.html> and also on [http://www.slider.com/enc/43000/Quisling\\_Vidkun.htm](http://www.slider.com/enc/43000/Quisling_Vidkun.htm) Also see O'Sullivan, *ibid.*, p126

<sup>1066</sup> Sykes, Ibid., p40. Also see O'Sullivan, *ibid.*, p126

<sup>1067</sup> Sykes, Ibid., p1.

<sup>1068</sup> Sykes, Ibid., p1. Also see O'Sullivan, *ibid.*, p126

<sup>1069</sup> Sykes, Ibid., p386. Also see O'Sullivan, *ibid.*, p126

<sup>1070</sup> Sykes, Ibid., p880. Also see O'Sullivan, *ibid.*, p126

<sup>1071</sup> Sykes, Ibid., p259. Also see O'Sullivan, *ibid.*, p126

<sup>1072</sup> Sykes, Ibid., p249. Also see O'Sullivan, *ibid.*, p126-127



A summary of these definitions will show the links that join the words into two very separate groups. Such a summary is essential, as it will lead to the hypothesis that this thesis supports.

The first group of words that have links in their definitions includes ‘treason’, ‘sedition’, ‘traitor’ and ‘quisling’. What can be seen in the definitions and the meanings of these words, is that both ‘treason’ and ‘sedition’ are very closely related to each other. Each provides a similar, if not the very same, meaning. Treason is defined as the act undertaken by someone who engages in war, initiates physical attacks against the authorities of the State, and plots to assassinate State leaders. Sedition also means that an agitated person who disrespects the State, would become a rebel and break the State’s law, by deliberately interrupting public order. They wish to cause chaos and disarray in the community.<sup>1073</sup>

The second group of words that have very close links in their definitions, includes ‘apostasy’ and all the other words that relate to the words in the definition of apostasy. What becomes very obvious, is that the definition of all the words: ‘abandonment’, ‘abandon’, ‘forsaken’, ‘renounce’, ‘desertion’, and ‘defection’ do not involve physical attacks due to a person’s rebellious reaction against the state authorities. Every definition of these words relates to the simple internal rejection or a change of a person’s faith, allegiance, and loyalty. Concerning apostasy, the change of religious belief is so internal that no one else would be aware of it, unless the apostate had informed them. This could be the case if, for example, they explained the real reasons why they had left the country (through desertion). Not one of the second group of words is defined with other words that are used, or even relate to the first group of words: ‘treason’ and ‘sedition’.<sup>1074</sup>

As stated above, the word apostasy derives from the Greek word *ἀπόστασις* – *apostasis*, which is the Greek word for ‘defection,’ or ‘desertion.’<sup>1075</sup> From these definitions, it

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<sup>1073</sup> O’Sullivan, *ibid.*, p127

<sup>1074</sup> *ibid.*, p127

<sup>1075</sup> *ibid.*, p127



could be argued that both ‘defection’ and ‘treason’ have almost identical definitions, as they both refer to a person who terminates their allegiance to a leader, a political party or a religion. However, there is a quite noticeable difference between these two words, as each have no link with each other and appears in a separate group of the two groups just discussed. ‘Defection’ is defined as meaning the perpetrator simply ‘falls away from their allegiance,’ which involves turning away from their problem. This can even include moving away into another country. On the contrary to this, ‘treason’ is defined as a person who will specifically violate their allegiance, by engaging in battles against the State. In the definition for ‘defection’ the word ‘desertion’ is also used, and the latter is defined as ‘running away’ from a problem, rather than remaining there to physically confront it.<sup>1076</sup>

The next term to be described and understood within an official theological form is that of *jihad* (جهاد). This term is often covered by the Western non-Islamic media to translate as meaning ‘Holy War.’ This particularly occurred in the Western media reports that covered the recent terrorist attacks on September 11<sup>th</sup>, 2001, when two aeroplanes were flown into the ‘Twin Towers’ of the World Trade Centre, in New York. The press described the pilots as being ‘Islamic fundamentalists’, who had undertaken the act of killing many people as a legitimate part of their *jihad*. The term needs to be addressed here because, in fact, the true definition of this term *jihad* is ‘to struggle.’ From the research undertaken for this thesis it has become apparent to the author that the genuine meaning of *jihad* is the duty of every person, be they a Jew, Christian or a Muslim, to ‘struggle’ in terms of the every day challenge to ‘fight’ along their internal path in finding ‘faith’ and ‘devotion’ in to God. Islam promotes the concept that for every sincere believer in God and God’s code of conduct, then the only level of physical fighting would be solely acceptable in the context of ‘self-defence’, when being under the attack from the enemies, or some form of opposition.

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<sup>1076</sup> *ibid.*, p127



#### 4.6 Heresy and *jihad* (جهاد)

Muhammad Sa'id 'Ashmawy, the former chief judge in the High Court in Cairo, defines the broad scale of meanings of *jihad* in various elements, "which can be either internal, as in the struggle within oneself to live an upright life or external to defend Islam."<sup>1077</sup> *jihad* in the Qur'an and in the Prophetic traditions means self-control and self-refinement. This meaning of the word is reported to have been described by the Prophet Mohammed himself as 'the greater *jihad*.' One *hadith*, in the collection of Ibn Majah, cites how the Prophet described the best manner in how Muslims should perform *jihad*:

أَفْضَلُ الْجِهَادِ كَلِمَةٌ حَقٌّ عِنْدَ سُلْطَانٍ جَائِرٍ.

The best form of *jihad* is to utter a word of truth to a tyrannical ruler.<sup>1078</sup>

The internal 'struggle' to question one's own life-style, aiming to be both a pious and humble person, following God's code of conduct, has far more importance as a daily task, than what is perceived to be the 'lesser *jihad*,' the self-defence physical protection when under attack by the enemy. In terms of war, *jihad* is only to be implemented as an act of self-defence alone. Therefore, if it is interpreted as being any more than this, 'Ashmawy declares that it is then not *jihad* but aggression - which has been forbidden by the verses and the very spirit of the Qur'an. As *jihad* is not one of the five pillars of Islam, "the one-sided stress placed on 'holy wars' and fighting is a historical distortion of the real concept of *jihad* and is due to political interests."<sup>1079</sup> Further than this, the most significant and important *jihad* is continual in life. It is based on ethical, moral and spiritual 'struggle'. 'Ashmawy explains that:

This *jihad* is a strenuous effort, or series of efforts, to discipline oneself against greed, avarice, cowardice, fear, tyranny, ignorance, submission to negative elements, yielding to evil desires and giving way to passion. This

<sup>1077</sup> Fluehr-Lobban, Carolyn, [Edited and Translated], *Against Islamist Extremism : The Writings of Mohammad Sa'id al-'Ashmawy*, 1998, University Press of Florida, USA, p129 also see McDermott, M. and Ashson, M., 1986, *The Muslim Guide: For Teachers, Employers, Community Workers and Social Administrators in Britain*, The Islamic Foundation, Leicester, p90

<sup>1078</sup> Ibn Majah, Muhammad b. Yazid al-Qazwini, *Sunan Ibn Majah*, Kitab al Fitan, Bab al-amr bi'l-ma'ruf wa'l-nahy 'an al-munkar, *hadith* no.4011, Cagri Yayinlari, Istanbul, 1401/1981, no page number provided

<sup>1079</sup> Ibid., p112



*jihad* avoids a meaningless existence and an empty, if not easy and comfortable, life.<sup>1080</sup>

However, a devout Muslim is mandated to live according to the guidance given by God and the Prophet and to promote the message of Islam through his or her words and actions. It essentially means that each individual must exert themselves in the utmost, in order to personally follow the teachings of Islam and to work for their establishment in society.<sup>1081</sup> Hence :

Commitment to God involves commitment to sacrifice one's time, energy and wealth to promote the right cause. It may be necessary at times to give one's life in order to preserve Truth. *Jihad* implies readiness to give whatever one has, including his life, for the sake of Allah.<sup>1082</sup>

However, this concept has lent itself rather easily to the cause of what is perceived to be 'Islamic fundamentalism.'<sup>1083</sup>

#### **4.6.1 'Islamic fundamentalism' – by Definition.**

When reading through newspaper articles in the Western media, the terminology that is often used is confusing. The incorrect terminology relates to issues that cover Islam, Middle Eastern international relations, the Islamic religious belief systems and the Islamic legal system. Therefore, when writing about Islam, it is essential for critics – especially in the West – to be constantly aware that the examples often used to attack Islam and 'Islamic human rights abuses' for example, are often drawn from very limited resources. Such examples include reference to *Imam* Ayatollah Khomeini's 'cultural revolution' within Iran in 1979 and more importantly, the use in Western press of Arabic terminology. One example here is the incorrect translation of *jihad*, which means that Muslims must have an internal *jihad* ('struggle'). In a broader meaning, it refers to the Muslim's 'struggle to be subservient to God, and aim to lead a pious and humble life.'

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<sup>1080</sup> Ibid., p115

<sup>1081</sup> Islamic Foundation, The, 1981, *Islam: The Essentials*, The Islamic Foundation, Leicester

<sup>1082</sup> Islamic Foundation, *Islam: The Essentials*, Ibid. p5

<sup>1083</sup> For a detailed assessment of how the term 'Islamic Fundamentalism' is defined from different perspectives by the Muslim and non-Muslim world, see: Declan O'Sullivan, 'In Defence of Islam and the Western Misinterpretation of What is Perceived to be 'Islamic Fundamentalism',' in *Le Courrier Du Geri – Recherches D'Islamologie et de Theologie Musulmane*, Vol. 2, No. 3. Automne 1999, GERI (Groupe d'Etudes et de Recherches Islamologiques), l'Université Marc Bloch de Strasbourg, France, p161-181.



This is clearly diametrically opposed to the Western media definition of *jihad*, as 'Holy War.'<sup>1084</sup>

The reader's confusion can be argued to be based on a lack of any adequate and neutral definition of the words used by the newspapers and television news reports. The other main phrase that is important for the Western audience to have a fuller understanding of, and have the ability to understand where the words or phrase derive from, is 'Islamic fundamentalism.'

#### **4.6.2 Islamic or Christian 'Fundamentalism'?**

The very phrase 'Islamic fundamentalism' is a popular journalistic term, and is considered by the press to be purely Islamic. However, the term 'fundamentalism,' in itself, originates as an Anglo-Saxon word, applied to those who believe that the Bible must be accepted and interpreted literally based on the words and deeds described within it. There is a close French term which is similar, *intégrisme*, but this term compares only on a vaguely similar theme – and in no means describes an exactly identifiable behaviour of Roman Catholicism.<sup>1085</sup>

These definitions cover the understanding of 'fundamental' belief within Christianity, a religion where obviously, several different branches exist. Equally within Islam, such different branches exist, including Sunni, Shi'a, Ahmadiyya (which is considered a heretical belief by other devout Muslims) and Sufi which, when assessing an internecine debate by Muslims, is considered to be a more philosophical idea, rather than a faith. Consequently, within these branches of Islam, Sunni fundamentalists accept the Qur'an its literal interpretation, with minor qualifications. However, Shi'a fundamentalist believers are *not* committed to a literal interpretation of the Qur'an.<sup>1086</sup> The concept of 'fundamentalism' has always been present in the *ahl-al-kitab* ('the people of the Book' –

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<sup>1084</sup> O'Sullivan, Declan, 'In Defence of Islam and the Western Misinterpretation of What is Perceived to be 'Islamic Fundamentalism',' in *Le Courrier Du Geri – Recherches D'Islamologie et de Theologie Musulmane*, Vol. 2, No. 3. Automne 1999, GERI (Groupe d'Etudes et de Recherches Islamologiques), l'Université Marc Bloch de Strasbourg, France, p162-163. The article can also be found on: <http://stehly.chez.tiscali.fr/declan.htm>

<sup>1085</sup> O'Sullivan, *ibid*, p163

<sup>1086</sup> Watt, William Montgomery, *Islamic Fundamentalism and Modernity*, Routledge, London, 1998, p2. Also see O'Sullivan, *ibid*, p164



which represents the revealed scripture, i.e. the Qur'an in Islam, the Bible in Christianity and the Torah in Judaism). Fundamentalism has always been present with the necessity to create a 'state' over-view of a community, by implementing the practical use of the revealed teachings of Allah/God/Yahweh. The names of the same Creator differ, due to the different context of the religion's origin and the language the message was revealed in - hence 'God' within Christianity, 'Allah' within Islam and Yahweh within Judaism.

The generalised phrase of 'Islamic fundamentalism,' *per se*, is a term which derives from the historical rise of fundamental Christianity, and is also so broad that it embraces such a vast category of differing radical, modernist and extremist branches, that it is not definitive enough to be used on its own. Abdel Salam Sidahmed and Anoushiravan Ehteshami highlight the fact that:

the term was taken from a particular Christian context and deployed into the Islamic field without due appreciation for the appropriate differences and peculiarities of the respective religious contexts.<sup>1087</sup>

They elaborate this point with the explanation that the term originated in the United States of America, at the beginning of the twentieth century when, as Frederick Denny remarks:

it was applied to ultraconservative Protestant Christian biblical literalists and inerrantists who propounded a list of 'fundamentals' that all true Christians should follow.<sup>1088</sup>

This definition suggests a tendency of believers to take the Holy Scripture in a literal sense, thus the implementation of how it is written *verbatim*, believing in absolute inerrancy in the text and the message and also adhering to several 'fundamental' factors with the ideal of separating true believers and the 'others.' How applicable these tendencies are within the Islamic fundamentalist's view on life is a vital assessment to gain an understanding of 'Islamic fundamentalism' as a concept. The Holy Scripture in Islam is obviously the Qur'an which holds the central focus for belief. Denny presents a comparison between the focus of faith in Christianity and the focus in Islam :

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<sup>1087</sup> Sidahmed, Abdel Salam and Ehteshami, Anoushiravan, (Eds.) *Islamic Fundamentalism*, 1996, Westview Press, Oxford, p2. Also see O'Sullivan, *ibid*, p164



Just as Christianity is the religion of and about Jesus, Islam is the religion of the Qur'an.<sup>1089</sup>

Having established this point, then one interpretation of the 'fundamentalists' dealing with fundamental, basic levels of 'what is right and what is wrong' clearly implies that it is therefore imperative that all Muslims, regardless of their rite, sect or piety, essentially believe in the inerrancy of the Qur'an as the revealed word of Allah. Hence in that case, as Esposito declares, if one is to be judged by their attitude towards scripture, then *all* Muslims would have to be classified as being 'fundamentalists.'<sup>1090</sup>

However, although Muslims agree on the authenticity of the Qur'an's revelation, there are different interpretations of the Qur'anic verses and their meanings. As Sidahmed and Ehteshami state :

By its very nature, the text of the Qur'an is formulated in a way that is far from self-explanatory. Accordingly, there is no way of taking the entire text of the Qur'an literally. It has to be interpreted, a task reserved for the learned jurists and ulama. The most common form of interpretation is called *tafsir*, or exegesis.<sup>1091</sup>

With one simple explanation of its definition, the term 'fundamentalism' implies the "activist affirmation of a particular faith that defines that faith in an absolutist and literalist manner."<sup>1092</sup> What is placed in Western media is generally not the message of true Islam, or what moderate Islamic intellectuals would promote as the Qur'anic principles of Islam. Simultaneously, having made that claim and admonishment, Muslim 'radical fundamentalists' must also be assessed in their socio-historical environments. Simply to label them as 'fanatics' as if this would be an adequate characterisation of their behaviour, is an emotional condemnation, without any attempt to really understand the casual relations that produced the phenomenon. Ahmad Moussalli states that

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<sup>1088</sup> Denny, Frederick, *An Introduction to Islam*, MacMillan, London, 1994, p345. Also see Sidahmed and Ehteshami, *ibid.*, p2, and see O'Sullivan, *ibid.*, p165

<sup>1089</sup> Denny, *ibid.*, p345. Also see Sidahmed and Ehteshami, *ibid.*, p2, and also see O'Sullivan, *ibid.*, p165

<sup>1090</sup> Esposito, John, L., *The Islamic Threat: Myth or Reality?*, Oxford University Press, 1992, p7-8.

Also see Sidahmed and Ehteshami, *ibid.*, p2, and also see O'Sullivan, *ibid.*, p165

<sup>1091</sup> Sidahmed and Ehteshami, *ibid.*, p2-3, and also see O'Sullivan, *ibid.*, p166

<sup>1092</sup> Maley, William, (Ed.), *Fundamentalism Reborn? Afghanistan and the Taliban*, C. Hurst & Co. Publishers, London, 1998, p17. Also see Voll, John, O., 'Fundamentalism' in Esposito, John, L., (Ed.), *The Oxford Encyclopaedia of the Modern Islamic World*, Oxford University Press, Vol.II, 1995, pp32-34. Also see Also see O'Sullivan, *ibid.*, p166



fundamentalist Islamic political thought has been described and believed to be purely a 'fad,' a passing phenomenon which is dependant on specific social and political circumstances. He believes the 'fundamentalist' movements have been studied and academically covered by political scientists as an agenda lacking any genuinely deep-rooted principles. The political movements who promote what is defined as the 'fundamentalist belief' have often been described as propagating "fanaticism."<sup>1093</sup> Farhang concludes this point, with the caveat that people should remember that, essentially:

The fanatic is always the other. This is why in the mass media, Muslim fundamentalists are presumed to be frenzied, irrational, thoughtless and brutal. Paraphrasing John Stuart Mill, this picture is at best a falsehood that contains an element of truth. Fanaticism is an enduring ingredient of history and thus those who wish to comprehend their motives and actions ought to refrain from substituting labels for analysis.<sup>1094</sup>

This, then, is an extremely strong and salient message to the West when considering the concept of 'fundamentalism' and especially in the effort to try and grasp an intellectual understanding of what exactly 'Islam' is and what it represents.<sup>1095</sup>

The term 'Islamic fundamentalism' has been used consistently throughout the thesis with great caution, with a constant awareness of the complexities that exists in and around its definition and the related varied arguments discussed above. To emphasise this awareness, when the term has been used throughout the thesis it has been placed within inverted commas in order to highlight such caution of its definition.

#### **4.6.3 *dar al-Islam* and *dar al-harb*.**

The theory of international proselytization of Islam is often defended by *jihad* – the 'just' or 'holy' war. Historically, Donna Artz argues that :

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<sup>1093</sup> Moussalli, Ahmad S., 'Two Tendencies in Modern Islamic Political Thought: Modernism and Fundamentalism' in *Hamdard Islamicus*, Vol.XVI, No.2, 1993, p51-52. Also see O'Sullivan, *ibid*, p167

<sup>1094</sup> Farhang, M., 'Fundamentalism and Civil Rights in Contemporary Middle Eastern Politics' in Rouner, L., (Ed.), *Human Rights and the World's Religions*, University of Notre Dame Press, Indiana, USA, 1988, p74-75. Also see O'Sullivan, *ibid*, p167

<sup>1095</sup> O'Sullivan, *ibid*, p167



Muslim jurists divided the world into '*dar al-Islam*'; the 'abode' of, or 'territory' of, Islam, that is the land under Islamic rule - and '*dar al-harb*'; the 'abode of war', territory not under Islamic rule.<sup>1096</sup>

Residents of *dar al-Islam* comprised of Muslims and certain non-Muslims, or *dhimmis*, who paid a *jizya* tax. Artz claims that whether *jihad* was aggressive or defensive is a debatable issue - as is whether or not it meant actual military conflict, or only political, religious and a psychological propaganda tool, with just a constant readiness for war.<sup>1097</sup> However, she concludes quoting Shihati, that "three options were available to non-believers faced with *jihad* :- convert to Islam, agree to *dhimma*, or fight to the death."<sup>1098</sup> Despite this historical position, *Jihad* is still very much adhered to today, by many fundamentalist Muslims,<sup>1099</sup> on their internal struggle. The term 'fundamentalist' in this context, refers to devout Muslims, who live by the Five Pillars of Islam, basing their life on the basic, fundamental tenets of Islam. However, when the term 'fundamentalist' is used as the Western media use it, in reference to 'extremist,' 'militant,' 'Islamic fundamentalist' groups, such as - for an ideal recent example - the labels placed upon the terrorists who undertook the act on September 11<sup>th</sup> 2001, then these groups perceive the '*dar al-harb*' to be the active 'abode of war', as defined by Donna Artz above. *Dar al-harb* is the territory of the infidels who need to be brought into Islam for their 'salvation', or to be killed should they refuse.

#### **4.7 jihad against apostasy.**

Majid Khadduri, in his work *War and Peace in the Law of Islam*, defines apostasy as occurring in two forms : (a) when the believer reverted [*irtidad* : literally 'turned his back against' ] from Islam with no intention of joining the *dar al-harb*, and (b) when a group of believers, having renounced Islam and joined the *dar al-harb*, or have separated

<sup>1096</sup> Artz, Donna, 'The Application of Human Rights Law in Islamic States,' in *Human Rights Quarterly*, Vol.12 No.2, May, , 1990 , The Johns Hopkins University Press, Baltimore, p211

<sup>1097</sup> Ibid., p210-211

<sup>1098</sup> Ibid., p211

<sup>1099</sup> Ibid., p214



themselves from the believer's community to create their own *dar* on separate territory.<sup>1100</sup>

The latter form can be dealt with by the believer's defence, by implementing the 'lesser' *jihad*.' This would be the case if the apostates were numerous enough and held sufficient power to oppose and threaten to overwhelm the Muslim authority. The imam was under the obligation to initiate the *jihad* against them. Khadduri, mentions that jurists advise negotiation before any fighting begins, since this may well succeed in persuading them to return to Islam. However, neither peace, tolerance or *ijma'* [general consensus] would be acceptable as the law does not accept any secession from Islam and apostates are not entitled to be given the status of *dhimmi*. The renegades must either return to Islam or accept the challenge of *jihad*. As in the case of unbelievers there should be notification, during the negotiations, that such fighting will follow if there is any failure to return to Islam. This notification is seen as satisfying the rule of 'declaration of war.' Should apostates refuse to revert back to Islam then fighting begins and the rules which govern the conduct of war would be the same as those governing a war against those people within the *dar al-harb*.

Neither the apostates property can be confiscated or divided as the 'spoils of war' nor the individuals themselves can be caught and forced to become slaves. Jurists such as Hanafi argue that the apostate's wife should become a *sabi* [taken as a slave] and that property should be taken as a spoil. Also, children born after apostasy of the parents are to be treated in a similar manner, although the majority of jurists do not think this is necessary. As the majority of jurists in the other Islamic Schools of Law differ in their own opinions on this issue, this is another example where the lack of consistency of the views held by Islamic jurists can be seen to exist.

The most outstanding case of 'apostasy' was the secession after the death of the Prophet Mohammad by several tribes of Arabia. The first caliph, Abu Bakr, chased the apostates

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<sup>1100</sup> Khadduri, Majid, 1955, *War and Peace in the Law of Islam*, The John Hopkins Press, Baltimore, U.S.A., p76



to try and convince them to return to Islam. This led to the period of *hurub al-ridda* (The Wars of Apostasy). The *al-ridda* episode gave rise to severe punishments – especially under the force of Khalid ibn al-Walid, who burnt many apostates to death. One eminent chronicler, Abu al-Abbas Ahmad ibn Yahya ibn Jabir Baladhuri, reports in his *kitab futuh al-buldan*, that nobody escaped death, except those who returned to Islam.<sup>1101</sup> The circumstances and the situation that followed the death of the Prophet, which led to the *hurub al-ridda* (The Wars of Apostasy) is covered in Chapter 4. The Chapter questions whether ‘apostasy’ is an appropriate title for those battles, and also covers all the elements that were involved at that time. It is possible to present alternative reasons that led to the fighting.

Khadduri argues that Islamic jurists distinguish between *jihad* against non-believers and *jihad* against devout believers, who had then become renegades from the faith of Islam, by professing dissenting views or renouncing the authority and legitimacy of the imam. Jurists generally agree that war would be just, when it was waged against such people – although they disagree on both its conduct and its termination. He quotes Abu al-Hasan ‘Ali ibn Muhammad ibn Habib Mawardi from his work *Kitab al-Ahkam al-Sultaniyya* :

Al-Mawardi subdivided the *jihad* against believers into three categories : First, the *jihad* against apostasy (*al-ridda*); second, the *jihad* against dissension (*al-baghi*) and third, the *jihad* against secession (*al-Muharibun*).<sup>1102</sup>

Khadduri also mentions that some jurists add a category to this list, which is *al-ribat* (for safe-guard frontiers). Two more interesting categories need to be discussed here, which cover the possible addition to *jihad*, focusing against the *ahl al-kitab* (The People of the Book, also referred to as the Scripturaries).<sup>1103</sup> Before the *ahl al-kitab* are covered, the *jihad* against the Polytheists (*mushrikun*) will be addressed.

<sup>1101</sup> Khadduri, Majid, *ibid.*, p77. Khadduri also cites Baladhuri, Abu al-Abbas Ahmad ibn Yahya ibn Jabir, *Kitab Futuh al-Buldan*, edited by M. J. Goeje, Leiden, 1866, p105-106, [English translation : Hitti, Philip, K., 1916, *The Origins of the Islamic State*, New York, p159-161]

<sup>1102</sup> Khadduri, Majid, *ibid.*, p74. Khadduri also cites Mawardi, Abu al-Hasan ‘Ali ibn Muhammad ibn Habib, *Kitab al-Ahkam al-Sultaniyya*, edited by M. Enger, Bonn, 1853, p89

<sup>1103</sup> Khadduri, Majid, *ibid.*, p74



There is no compromise permitted for those who fail to believe in Allah. They have to either except Islam or fight. In the Qur'an Muslims are obliged to "fight the polytheists whenever ye may find them" (9:5), to "fight those who are near to you of the polytheists and let them find you in sternness" (9:124) and "when you have met those who misbelieve, strike off their heads until you have massacred them...." (47:5).<sup>1104</sup>

It is useful to place these sentences in their fuller context, so they are not read as isolated extractions. The entire text of each verse can be found in Abdullah Yusuf Ali's translation of the Qur'an<sup>1105</sup>, cited as 9:5, 9:123 and 47:4:

فَإِذَا انْسَلَخَ الْأَشْهُرُ الْحُرُمُ فَاقْتُلُوا الْمُشْرِكِينَ حَيْثُ وَجَدْتُمُوهُمْ وَخُذُوهُمْ  
وَاحْصُرُوهُمْ وَأَقْعُدُوا لَهُمْ كُلَّ مَرْصِدٍ إِن تَابُوا وَأَقَامُوا الصَّلَاةَ وَآتَوُا الزَّكَاةَ  
فَخَلِّوْا سَبِيلَهُمْ إِنَّ اللَّهَ غَفُورٌ رَحِيمٌ

But when the forbidden months are past, then fight and slay the Pagans wherever ye find them, and seize them, beleaguer them, and lie in wait for them in every stratagem (of war); but if they repent, and establish regular prayers and practise regular charity, then open the way for them: for Allah is Oft-forgiving, Most Merciful. (9:5)

يَا أَيُّهَا الَّذِينَ آمَنُوا قَاتِلُوا الَّذِينَ يَلُونَكُمْ مِنَ الْكُفَّارِ وَلِيَجِدُوا فِيكُمْ غِلْظَةً  
وَاعْلَمُوا أَنَّ اللَّهَ مَعَ الْمُتَّقِينَ

O ye who believe! fight the unbelievers who gird you about, and let them find firmness in you: and know that Allah is with those who fear Him. (9:123)

<sup>1104</sup> Khadduri, Majid, *Ibid.*, p75. Also see O'Sullivan, Declan, 'Taliban Destroy the Buddha Statues in Afghanistan' *op.cit.*, p66

<sup>1105</sup> Abdullah Yusuf Ali, in *The Holy Qur'an*, *op.cit.*



فَإِذَا لَقِيتُمُ الَّذِينَ كَفَرُوا فَضَرْبَ الرِّقَابِ حَتَّىٰ إِذَا أَثْخَتُمُوهُمْ فَشُدُّوا الْوَتَاقَ فَإِمَّا مَنًّا بَعْدُ وَإِمَّا فِدَاءً حَتَّىٰ تَضَعَ الْحَرْبُ أَوْزَارَهَا ذَلِكَ وَلَوْ يَشَاءُ اللَّهُ لَانْتَصَرَ مِنْهُمْ وَلَكِن لِّيَبْلُوَ بَعْضَكُمْ بِبَعْضٍ وَالَّذِينَ قُتِلُوا فِي سَبِيلِ اللَّهِ فَلَن يُضِلَّ أَعْمَالَهُمْ

Therefore, when ye meet the Unbelievers (in fight), smite at their necks; At length, when ye have thoroughly subdued them, bind a bond firmly (on them): thereafter (is the time for) either generosity or ransom: Until the war lays down its burdens. Thus (are ye commanded): but if it had been Allah's Will, He could certainly have exacted retribution from them (Himself); but (He lets you fight) in order to test you, some with others. But those who are slain in the Way of Allah,- He will never let their deeds be lost. (47:4)

Together with the Qur'anic *tafsir*, the point raised by Khadduri concerning these verses becomes enhanced when linked on *ahadith* which support such a position. A widely used *hadith* states that the Prophet Mohammad is reported to have declared "I am ordered to fight polytheists until they say 'there is no god but Allah.'"<sup>1106</sup> All jurists, perhaps without exception assert that polytheism and Islam cannot exist simultaneously. Polytheists who engage in *shirk*, must choose between Islam and war. A very vital point to raise here, is the issue stated by Khadduri, that

The definition of a polytheist has not been precisely stated by any jurists. They exclude not only Scripturaries (who believe in Allah, though not His Apostle) but also Magians (Zoroastrians) whose belief in Allah is obscure, but they had some sort of a book.<sup>1107</sup>

Polytheism seems to be confined narrowly to paganism concerning believers with no implied concept of a supreme deity. During the Hijaz, the principle was carried out but in some parts of Arabia such as al-Yaman [the Republic of Yemen], some believers of Judaism – held as *ahl al-kitab*, were permitted to reside there. No-one was allowed to live within Arabia if they did not fit within one of the categories of either accepting Islam, converting to become believers or remained within the *ahl al-kitab*. After the death

<sup>1106</sup> Khadduri, Majid, op.cit. p75



of the Prophet Mohammad, the Christians of Narjran were given the pledge of security, as they were considered *dhimma*, but they were required by the Caliph 'Umar to leave for separate settlement in the Fertile Crescent.<sup>1108</sup>

The rules were later relaxed and made more lenient. As Khadduri mentions "at the present, Scripturaries / *ahl al-kitab* are forbidden from residing only in Makka." (Makka is the Arabic phonetic spelling for what has been Anglicised as Mecca). The Hanbali jurist Ibn Qudama permits members of the Scripturaries / *ahl al-kitab* to travel through the Hijaz, including Makka, provided that they had no intention of settling there for residence. Also the present practice is to forbid the Scripturaries / *ahl al-kitab* for entering Makka alone, which allows non-Muslims to travel anywhere else and even reside within Jidda ( the Arabic phonetic spelling for what has been Anglicised as Jeddah).<sup>1109</sup>

Khadduri defines the Scripturaries or *ahl al-kitab* as specifically being believers of Judaism, the Sabians and the Christians who believe in Allah but, according to Muslim creed, they distorted their Scriptures and fell into Allah's disfavour. Thus, they accept Allah but refuse to accept both His Apostle, the Prophet Mohammad and the Qur'an. On this position the *ahl al-kitab* are held the same as the polytheists (*mushrikun*) and deserve some form of punishment, but more reduced than the Polytheists, as they do believe in Allah. Khadduri asserts that *jihad* is invoked against them, but not in the same depth as that held against the Polytheists. The latter have the limited choice between Islam or *jihad*, whereas the *ahl al-kitab* have the choice of three propositions : Islam, *jiza* or *jihad*.<sup>1110</sup>

Should they accept Islam they become entitled to be under the legal status and regarded full citizenship as the other believers in the community. If they prefer to remain within the *ahl al-kitab* while paying the *jiza* tax the suffer certain disabilities that reduce them as

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<sup>1107</sup> Ibid, p75. Also see O'Sullivan, Declan, 'Taliban Destroy the Buddha Statues in Afghanistan' op.cit., p66

<sup>1108</sup> Khadduri, Ibid, p184

<sup>1109</sup> Ibid., p76. Khadduri also cites Ibn Qudama, *al-Maghni*, edited by Rashid Rida, Cairo, AH1367, Vol. VIII, p530-531



‘second citizens’ (*dhimma*). However, if they fight the believers, they will be treated in the same defence against polytheists (*mushrikun*).<sup>1111</sup>

The classical jurist-theologians provide elaborate sets of rules, which govern the relations of the *dhimma* with Muslims. Khadduri questions whether such restrictive character of these rules is not the result of an age of intolerance and oppressive ruling. He suggests that a study of early Muslim theory and practice regarding the treatment of non-Muslim communities, may cast a light on the changes they underwent in later periods. The Prophet Muhammad’s relations with the *ahl al-kitab* who were willing to accept him and his prophet-hood, created both religious tolerance, together with vigilance and caution on a political level. Khadduri claims that these point are clearly manifested in the Madina Treaty, which was produced circa A.D.623. The treaty brought together an agreement between the Aws and the Khazraj tribes, to which the Jews were allowed to adhere with. The Treaty specifically dealt with the relations between the Jews and the Muslims and the level of tolerance which would be implemented :

The Jews of Banu ‘Awf form a nation with the believers. The Jews shall have their own religion and the Muslims their own religion.....No Jew is allowed to join [the Muslims in battle] without the authorisation of Muhammad.....The Jews shall contribute to expense for battle so long as they fight with believers.<sup>1112</sup>

Khadduri argues that this Treaty imposes no restrictions on the Jews apart from their continuation as a separate religious group within Muhammad’s larger Islamic community. They were not obligated to participate in war, unless invited to do so and if so they were expected to contribute the extra expenses which would involve their action duties. No general financial tribute to the community was imposed at that time – as not until later was the *jizya* (poll tax) introduced - and Khadduri suggests that “indeed, the Jews were treated almost on equal footing with the Muslims.”<sup>1113</sup>

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<sup>1110</sup> Khadduri Ibid, p80. Also see O’Sullivan, Declan, ‘Taliban Destroy the Buddha Statues in Afghanistan’ op.cit., p67

<sup>1111</sup> Ibid, p80,

<sup>1112</sup> Khadduri, Ibid., p178

<sup>1113</sup> Ibid., p178



Khadduri considers whether such a need for allies was compelling enough to offer compromise with the *ahl al-kitab* communities. He further explains that after Islam had been established, particularly around AD 630, after the capture of Makka (phonetic transliteration of what is presently called Mecca). At this stage Prophet Muhammad then requested for the *ahl al-kitab*, those accepted as dhimmi, should pay the *jizya* – following a pre-Islamic practice – which was formalised in the Qur'an, revealed circa AD631 as :

Fight against those to whom the Scriptures have been given who believe not in Allah not the Last Day and who forbid not that which Allah and His apostle have forbidden and who profess not the profession of the truth, until they pay the *jizya* out of hand and they be humbled.<sup>1114</sup>

The acceptance of the *ahl al-kitab*, except certain warnings to those perceived to have a hidden agenda for an ingenious plan, Khadduri raises the point that the Qur'an imposes no other restrictions. He argues that both the Qur'an and *ahadith* (Traditions) impress upon Muslims such obligations to not only tolerate the compromising and acceptable *ahl al-kitab* who have maintained peaceful relations with Islam, but to physically protect them from any attacks and/or mistreatment.<sup>1115</sup>

Khadduri quotes several charters that were issued by the Prophet which were created to obtain some compromise and mutual respect between the Muslims and the *ahl al-kitab* for the tribes of Tabala, Jarash, Adhruh, Maqna, Khaybar, Najran and Ayla. The charters provide the *ahl al-kitab* protection of life, property and their differing religious beliefs if they reciprocated by paying the *jizya*. These charters have been recorded by Ya'qub ibn Ibrahim al-Ansari Abu Yusuf, in his work *Kitab al-Kharaj*, and Abu al-Abbas Ahmad ibn Yahya ibn Jabir Baladhuri in his work *Kitab Futuh al-Buldan*.<sup>1116</sup> As an example of such a pact-charter with Najran reads as :

In the name of Allah, the Compassionate, the Merciful.  
This is (the pact) which has been issued by Muhammad, the  
Apostle of Allah, to the people of Najran, to whom his  
authority shall extend – their fruit, their money and their

<sup>1114</sup> Khadduri, p178, Qur'an 9:29

<sup>1115</sup> Khadduri, Ibid., p179, Khadduri also cited Qur'an 2:62; 5:82; 39:46 and also al-Bukhari, *Kitab al-Jami al-Sahih*, edited by Krehl, Leiden, 1864, Vol. II, p291-301

<sup>1116</sup> Khadduri, Ibid., p179-180



slaves. All these are left to them except the payment of 2,000 uncial dresses (*hulal al-awaqi*), of which 1,000 to be paid in the month of Rajab and 1,000 in the month of Safar together with an ounce of silver on each payment. If the produce exceeded, or became less than (the tribute), the latter will be estimated in proportion to the former. The people of Najran are expected to lend (the Muslims) shields, horses, animals and other objects. They must also entertain and provide supplies for my messengers for a maximum period of twenty days, but these must not be kept with them more than a month. If there were war in al-Yaman or in Ma'arra, they must supply clothes for thirty persons, thirty horses and thirty camels. If some of what was lent to my messengers had been destroyed or perished, (the people of Najran) shall be compensated. They shall have the protection of Allah and the promise of Muhammad, the Apostle of Allah, that they shall be secured their lives, property, lands, creed, those absent and those present, their families, their churches and all that they possess. No bishop or monk shall be displaced from his parish or monastery and no priest shall be forced to abandon his priestly life. No hardships or humiliation shall be imposed on them nor shall their land be occupied by (our) army. Those who seek justice, shall have it: there will be no oppressors or oppressed. Those who practice usury, shall seek no protection from me. No one shall be taken as responsible for the fault of another. For the continuation of this compact, the guarantee of Allah and the assurance of Muhammad, Apostle of Allah, sanction what has been written until Allah manifests his authority with their obligations, giving no support to oppression. Done in the presence of the following witnesses : Abu Sufayn Ibn Harb, Ghaylan Ibn 'Amr, Malik Ibn 'Awf of (the tribe of) Banu Nasr, al-Aqra' Ibn Habis al-Hanzali and the al-Mughira Ibn Shu'ba. 'Abd-Allah Ibn Abu Bakr acted as secretary.<sup>1117</sup>

This charter utterly presents the vast level of tolerance that was proffered by the Prophet in terms of embracing the passive non-Muslims in arms of acceptance, together with their acknowledgement of this respect and thus, their reciprocated compromise and mutual respect to live within an ecumenical community. The wording of the charter offers the

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<sup>1117</sup> Khadduri, Ibid., p179-180, Khadduri also cited Baladhuri, Abu al-Abbas Ahmad ibn Yahya ibn Jabir, *Kitab Futuh al-Buldan*, edited by M. J. Goeje, Leiden, 1866, p65, [English translation : Hitti, Philip, K.,



promise of protection of their lives, their own property and religious beliefs, if they believe in God. The Prophets tolerance even accepts the allowance of monks and priests to continue their leadership within their own communities and maintaining the use of the churches. The last sentence epitomises the Prophets' message, offering nothing related to, or creating humiliation or to hold the *ahl al-kitab* with any low esteem.

Muhammad Ibn Sa'd refers to another charter in his work *kitab al-tabaqat al-kabir*. This charter was written up for the Christians of Ayla ('Aqaba), addressed to Yuhanna (John) the Christian leader of Ayla, as an invitation to accept the presence and sincerity of Islam and its followers :

To Yuhanna Ibn Ru'ba and the chiefs of the people of Ayla. Peace be on you. Praise be to Allah, besides whom there is no god. I shall not fight you until I have written to you. Accept Islam or pay the *jizya* and obey Allah and His Apostle and the messengers of the Apostle. Honour the messengers and clothe them with good clothing, but not clothing of conquerors.<sup>1118</sup> Clothe Zayd with good clothing for so long as my messengers will be pleased, so am I.....If you desire security by land and by sea, obey Allah and His Apostle and you will be defended from every attack by Arab or '*ajam* (foreigner). If you refuse, I will not accept anything from you until I have fought against you and have slain your men and have taken captive (*sabi*) your women and children. I am the Apostle of Allah; I believe in the truth, in Allah, His Books, His Apostles and in Jesus son of Mary, who is the words of Allah and I believe inn him as an Apostle of Allah.

Come, before evil will touch you! I have commanded my messengers to you. Give Harmala three *wasqs* (measure) of barley. For Harmala has interceded for you. As for me, if it were not for Allah and for that (intercession), I would not have communicated with you until you have been brought face to face with my army. If you obey my messengers, Allah will be your neighbour and so is Muhammad and his followers. My messengers are Shurhabil, Ubay, Abu Harmala, Hurayth Ibn Zayd al-Ta'i. Whatever they will agree upon with you, I shall accept. Upon you is the

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1916, *The Origins of the Islamic State*, New York, p101-102] and Abu Yusuf, Ya'qub ibn Ibrahim al-Ansari, *Kitab al-Kharaj*, Cairo, A.H. 1352, p72-73

<sup>1118</sup> Khadduri explains here that "clothing given to conquerors was taken by force, and consequently the conquered people were not willing to give the best they had." Khadduri, *Ibid.*, p180, (footnote 9)



protection of Allah and His Apostle. If you submit, then peace be on you. Send the people of Maqna to their land.<sup>1119</sup>

In response to this, Yuhanna is reported to have travelled to the Prophet's camp for a meeting. He was treated kindly, as a guest, and the result of the negotiations developed a further pact, which has been recorded by Muhammad Ibn Sa'd and by Abu Muhammad 'Abd al-Malik Ibn Hisham in *Kitab Sirat Sayyiduna Muhammad*. The agreements made between the two read as :

In the name of Allah, the Compassionate, the Merciful; This is a guarantee from Allah and from the Prophet Muhammad, the Apostle of Allah, to Yuhanna Ibn Ru'ba and the people of Ayla; For their vessels and their travellers is the security of Allah and Muhammad, the Apostle of Allah, and for all who are with them, whether from al-Sham (Syria) or al-Yaman (Yemen) or from the sea-coast; Those who cause a grave event (*hadath*),<sup>1120</sup> their wealth will not save them, they will be the fair prize of whosoever captures them; It will be unlawful to prevent them (the people of Ayla) from going to the springs of water, or to stop them from the road they follow, by land or by sea; This is written by Juhaym Ibn al-Salt and Shurahbil Ibn Hasana by the permission of the Apostle of Allah.<sup>1121</sup>

These charters and their content are of particular interest in raising the points which describe the level of toleration in the earliest interaction of Muslim-*ahl al-kitab* relationships and Khadduri suggests that they highlight the obvious simplicity and lack of any social hierarchy between Muslims and non-believers. The counter-argument could be offered, that the circumstances induced a somewhat necessary conciliation between the differing communities – but Khadduri argues that it is also true that it was inherent in the Prophet's teachings which emphasised toleration of those believers of God who possessed revealed scriptures, i.e. the *ahl al-kitab*. Khadduri's furthers this point, by

<sup>1119</sup> Khadduri, Ibid., p180-181, Khadduri also cited Ibn Sa'd, Muhammad, *Kitab al-Tabaqat al-kubir*, 1917, edited by E. Mittwoch and Edward Sachau, Leiden, Vol. I, p28-29

<sup>1120</sup> Khadduri defines that "*hadath* may mean a serious event or a calamity." Ibid., p181, (footnote 12)

<sup>1121</sup> Khadduri, Ibid., p 181, Khadduri also cited Ibn Sa'd, Muhammad, op. cit., Vol. I, Part 2, p37 and Ibn Hisham, Abu Muhammad 'Abd al-Malik, 1859, *Kitab Sirat Sayyiduna Muhammad*, edited by Ferdinand Wustenfeld, Gottingen, Vol. II, p902



arguing that the main focus of the Prophet's mission was concentrating on promoting the very belief in Allah and defending his role as the Apostle of Allah, which meant the recognition on this by non-Muslims and the acceptance of his authority - although the latter was secondary to his important message. As the *ahl al-kitab* believed in Allah, but refused to accept His Apostle, they had – when establishing the pacts and charters – recognised the Prophet's leadership and control, thus divinely ordained position - without overtly accepting the title of Apostle. As this was the main practical position of the communities difference in beliefs, the Prophet Muhammad accepted the compromise in presumption that toleration would eventually be beneficial for the 'half-believers' to accept and embrace the fully true belief of Islam. Khadduri states that this actual position was revealed in the Qur'an in 2:255, 3:61-64 and 29:45.<sup>1122</sup>

To stimulate the acceptance of the differing communities living together with mutual respect, no discriminatory policies were introduced or implemented for non-believers except payment of the *jizya*, which was equivalent of the payment of *zakat* by Muslims. Khadduri concludes with :

If Muhammad ever resorted to crushing opponents, such actions were dictated by *raison d'état* – for failure to obey authority – not for lack of religious toleration.<sup>1123</sup>

It is now possible to cover another form of *jihad*, that is aimed against those who are referred to as being *baghi*, either dissenters, or traitors.

#### **4.7.1 jihad against baghi.**

*Baghi* is an attempt at dissension.<sup>1124</sup> If dissenters do not renounce the authority of the imam, they were not to be fought against and were allowed to live within the dar al-Islam. The imam, however, should persuade them to abandon their dissenting ideas and to conform to orthodox belief. If they refused to do so and failed to conform to the law

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<sup>1122</sup> Khadduri, Ibid., p 182

<sup>1123</sup> Khadduri, Ibid., p 182

<sup>1124</sup> *Baghi* – dissension or sedition is listed as a crime of *al-hudud*, (singular – *hadd*), those crimes stated with the punishment within the Qur'an.



within *dar al-Islam*, then they would be fought against. If dissension was the result of specific grievances which did not touch the Islamic creed, including a reaction against the ruling governor, then there should be an attempt to reconcile between the parties. If the numbers of those with grievance were so small that they were of no real threat, as they could be controlled quite easily, then there would be no need for any *jihad*.

Abdulaziz Sachedina suggests that the role of *jihad* is very closely related to the issue of capital punishment for apostasy in Islamic law. He argues that it can be seen as a logical corollary for the Qur'anic message for obliterating 'corruption on the earth' and for 'enjoining good and forbidding evil.'<sup>1125</sup> In one form of implementing *jihad* it is defensible to use it as moral basis that does not interfere with the concept of freedom of conscience, paralleled with the legitimate use of state force to maintain public order. According to Qur'anic exegetes, *jihad* first of all occurred in Medina when Muslims were given permission to defend themselves by fighting back with the 'people who broke their solemn oaths,' as cited in the Qur'an in 9:13 –

Will you not fight a people who broke their (solemn pledges) and purposed to expel the Messenger (and did attack you first)?<sup>1126</sup>

and also in verse 4:91 –

If they withdraw not from you and offer you peace and restrain their hands, take them and slay them wherever you come on them; against them We have given you a clear authority.<sup>1127</sup>

Sachedina states that it is not very difficult to acknowledge a strictly moral justification for the permission that is given to Muslims on retaliation with force against those who attack them. To defend this point, he refers to the comments of Fazlur Rahman, in *Major Themes of the Qur'an*, who points out that, when reviewing Islamic history, it is not

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<sup>1125</sup> Little, David; Kelsay, John and Sachedina, Abdulaziz, A., *Human Rights and the Conflict of Cultures : Western and Islamic Perspectives on Religious Liberty*, 1988, University of Carolina, USA, p84

<sup>1126</sup> Sachedina, Abdulaziz, Ibid., p84, also see Qur'an 9:13

<sup>1127</sup> Sachedina, Ibid., p84, also see Qur'an 4:91. Also see O'Sullivan, Declan. 'Taliban Destroy the Buddha Statues in Afghanistan' op.cit., p68



difficult to find a consistent justification for *jihad* on this basis, in the Qur'an. Fazlur Rahman argues that the justification for *jihad* is based on a "strong willed resistance to the pressure of *fitna* (a situation where a person is pressured by others to defect from his affiliations or retreat from his views, especially by close relatives) and retaliation in case of violence."<sup>1128</sup> Rahman further sees *jihad*, when given in the context of Medina, as "an organised and total effort of the community – if necessary through war – to overcome the hurdles in the way of the spread of Islam."<sup>1129</sup> Sachedina continues this point by arguing that such a purpose of *jihad* can not contradict the enforcement of a standard of state justice, if the spread of Islam refers to the protection of the political dominance of Islam, without intruding on the freedom of religion.

As can be seen in the Qur'anic verses above, Sachedina emphasizes the point that the Qur'an justifies defensive *jihad* only. The Qur'an repeatedly refers to the hostile unbelievers who are held to be dangerous or faithless. He states that there are many instances to be found where the actual motivation was an interest in expanding the control of territory. He raises the point that Muslim exegetes were aware of the tension between the demand of the Muslim community to make 'God's will succeed' (Qur'an 9:41) and the clear claim of 2:256 the "No compulsion is there in Religion."<sup>1130</sup>

(لَا إِكْرَاهَ فِي الدِّينِ) – *La ikraha fee din*). Thus, if *jihad* is understood within the consistent

Qur'anic emphasis on human desire towards unequivocal faith, then permitting the use of force against moral and civil offences cannot be seen as contradicting the 'No compulsion' verse. He views the contrary of this, as such an emphasis removes any doubt on the purpose of *jihad* and based on the 'No compulsion' verse, the *jihad* as a 'holy war' is positively there 'commanding the good and forbidding the evil.'

The Qur'an sanctions *jihad* in a form which establishes an order that will protect the basic welfare of the Muslim community against both internal and external hostile enemies,

<sup>1128</sup> Ibid., in footnote 32, p90. Also see Rahman, Fazlur, *Major Themes of the Qur'an*, Bibliotheca, Chicago, 1980, p63 and p159-160

<sup>1129</sup> Sachedina, Ibid., in footnote 32, p90. Also see Rahman, Fazlur, Ibid., p63 and p159-160

<sup>1130</sup> Sachedina, Abdulaziz, Ibid., p84. Also see O'Sullivan, Declan, 'Taliban Destroy the Buddha Statues in Afghanistan' op.cit., p69



such as those who actively take up war against God and His Messenger, as stated in Surah Al-Ma'ida, 5 verse 33 :

إِنَّمَا جَزَاءُ الَّذِينَ يُحَارِبُونَ اللَّهَ وَرَسُولَهُ وَيَسْعَوْنَ فِي الْأَرْضِ  
فَسَادًا أَنْ يُقَتَّلُوا أَوْ يُصَلَّبُوا أَوْ تُقَطَّعَ أَيْدِيهِمْ وَأَرْجُلُهُمْ مِنْ خَلْفٍ أَوْ  
يُنْفَوْا مِنَ الْأَرْضِ ذَلِكَ لَهُمْ خِزْيٌ فِي الدُّنْيَا وَلَهُمْ فِي الْآخِرَةِ عَذَابٌ  
عَظِيمٌ

The punishment of those who wage war against God and His Prophet, And who rampage about the land, pillaging and plundering and spreading corruption wherever they tread, is this: death by hanging, or crucifixion, or the cutting off of hands and feet from opposite sides, or, at the very least, exile from the land. This will be their humiliating punishment in this world; in the world to come a greater and far more humiliating punishment awaits them all - [Al-Ma'ida, 5 verse 33]<sup>1131</sup>

Sachedina also cites 9:13, as mentioned above, referring to those who are unbelievers breaking their oaths, therefore becoming an ever present threat to the temporal security of the Islamic state. Thus, in order for an Islamic state to promote the use *Jihad* and/or *hudud* as a force, the conditions this requires would be an open display that morals have been violated in specific incidents. This concludes to the fact that Islamic authorities, whether political or juridical, must carefully hold the burden of proof. They must be confident enough to present to the Muslim community, which they represent, that any

<sup>1131</sup> Turner, Colin, *The Quran: A New Interpretation*, Textual Exegesis by Mohammad Baqir Behbudi, Curzon Press, 1997, [Al-Ma'ida, Surah 5, verse 34], p62. The same verse is quoted as 5:36 in Ali, Abdullah Yusuf, *The Holy Qur'an : Volume I*, Ibid., p252-253 but as 5:33 in Mohammad Asad, in *The message of the Qur'an* Ibid., p148 and also as 5:33 in by Maulana Abdul Majid Daryabadi, *Tafsir-ul-Qur'an*, Ibid., p425 and 5:33 in by Maulvi Mohammad Ali, 1920, *The Holy Qur'an*, Ibid., p251. It is important to note here that Sachedina actually cites Surah 4, verse 33, (on Ibid., p85), but this must be an unfortunate typing error, as 4:33 reads as "And unto everyone We have appointed heirs to what he may leave behind: parents and near kinsfolk, and those to whom you have pledged your troth: give them, therefore, their share. Behold, God is indeed a witness unto everything" [cited from Mohammad Asad's *Qur'anic translation*, Ibid., p109], which is irrelevant to the point being made here. Obviously, 5:33 clearly matches to the reference Sachedina makes. Also see O'Sullivan, Declan, 'Taliban Destroy the Buddha Statues in Afghanistan' op.cit., p70



decision made to enforce compulsion concerning people's religious faith is not based on purely attempting to change a person's belief but, instead, by offering a guarantee that basic moral and civic requirements would be met and sustained.

#### **4.8 Conclusion**

In order to not cause a Western non-Arabic speaking audience such confusion and misunderstanding of how Islam precisely perceives 'apostasy,' then the thesis suggests that it is entirely incorrect to translate the act of 'apostasy' (*irtidad wa ridda*) by using the English word 'treason.' This is because in English, treason means something completely different to what 'apostasy' means. The words have separate definitions, and therefore they are entirely separate acts, with separate established legal penalties. However, this thesis has also proven that there is no validity to argue that the word used in Arabic for 'treason' and the English word have a different meaning, hence this point of view suggests that it is acceptable to translate the Arabic for 'apostasy' into English by using 'treason.' This argument is either completely false, or is –at the very least – a rather weak argument, with little or no support. As has been discussed in the thesis, in Arabic *al-baghi* means sedition or treason, whereas *irtidad wa ridda* means apostasy. These are different words with very different definitions and, again, have separate legal penalties.

As shown in Chapter One, *al-baghi* has been argued to be listed as the seventh crime to be punished by the *hudud* system. Therefore, the death penalty is for the rebellious acts by dissidents and murderers who undertake *al-baghi*. If they are also convicted of committing *irtidad wa ridda* during their agitated sedition against the state, they are to be punished with the death penalty for *al-baghi* – and not *irtidad wa ridda* from Islam.



## CHAPTER FIVE

### 5.0 THE ISSUE OF *TAKFIR AL-MUSLIM*

#### 5.1. Introduction.

The act of *takfir al-Muslim* – when a Muslim declares another Muslim as being a *kafir* (an unbeliever) – is prohibited in Islam. Maulana Sayyid ‘Abul Ala Mawduwdi wrote an article entitled ‘Mischief of *Takfir*’ in 1935, which expressed the views on many aspects involving *takfir*, and also covers, in some detail, how the act of *takfir* is forbidden within Islam. As he suggests :

In the period of the decline of the Muslims, among the many troubles that have arisen, one serious and dangerous mischief is that of declaring one another as *kafir* and wrong-doer, and cursing one another.<sup>1132</sup>

Mawduwdi also expresses the view that :

Whereas God in His clear Book had drawn a plain line of distinction between *kufir* and Islam, and had not given anyone the right to have discretion to declare anything he wants as *kufir* and anything he wants as Islam. Whether the cause of this mischief is narrow-mindedness with good intentions, or selfishness, envy and self-seeking with malevolent intentions, the fact remains that probably nothing else has done the Muslims as much harm as this has done.

*As to the question of a person being in fact a believer or not, it is not the task of any human being to decide it. This matter is directly to do with God, and it is He Who shall decide it on the day of Judgment.*<sup>1133</sup> [Italics added for emphasis]

The last point he makes, clearly identifies the fact that in Islam, it is not the authority of any human to judge another on whether they believe in God or not. This decision is due only to God, who will declare His acceptance of a believer or punish a disbeliever on Judgement Day, following their natural death. To reiterate this position, on how the notion of *takfir al-Muslim* is prohibited, and how the penalties imposed on those found guilty of ‘disbelief’ is perceived, Syed Barakat Ahmad explains that :

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<sup>1132</sup> Mawduwdi, Maulana Sayyid Abul Ala, ‘Mischief of *Takfir*,’ in *The Light & Islamic Review*, Vol.73, No. 6, November-December 1996, on <http://www.muslim.org/light/96-6.htm> Also found in *Tarjuman al-Qur’an*, May 1935, no publisher presented. This article is also found in Mawduwdi, Maulana Sayyid Abul Ala, *Tafhimat*, Part II, eleventh edition, Islamic Publications, Lahore, March 1984, pages 177-190

<sup>1133</sup> Mawduwdi, ‘Mischief of *Takfir*,’ *ibid.*, no page number provided. Also see O’Sullivan, Declan, ‘Egyptian Cases of Blasphemy and Apostasy against Islam: *Takfir al-Muslim* (Prohibition against Attacking those Accused)’ in *The International Journal of Human Rights*, Frank Cass Publishers, Vol., 7, No.2, 2003, p.112



The concept of *takfir*, declaring Muslim unbelievers, and then punishing them on the basis of their differences from a certain standard prescribed by a religious authority, is alien to Islam.<sup>1134</sup>

Mohammad Hashim Kamali describes the legal position in regard to *takfir* :

*Shari'ah* forbids the attribution of disbelief, blasphemy or heresy to a Muslim. This is a normative principle which is applied even to cases where one suspects another of disbelief (*kufir*). Thus, if a believer observes a fellow Muslim uttering words or indulging in acts which might be suggestive of disbelief, he must give him the benefit of the doubt, and avoid charging him with disbelief in all cases which fall short of self-evident proof. Even in the latter event, it is strongly recommended.....that people should avoid charging others with infidelity and disbelief.<sup>1135</sup>

Claims by one Muslim to another that the accused lacks any faith can cause problems which can affect the entire community. Any generalised accusation by one Muslim against another of being a 'disbeliever,' is based purely on the accuser's opinion alone. Such a generalised accusation is another valid reason why *takfir* is forbidden within Islam.

*takfir* and calling others wrong-doers is not merely the violation of the rights of an individual, rather it is also a crime against society. It is an act of injustice against the entire Islamic society, and it does immense harm to the Muslims as a community. The reason for this can be understood easily with a little thought.<sup>1136</sup>

What becomes very apparent when researching this area concerning a person's opinion of whether one devout Muslim may judge another of whether or not they are a devout believer in their faith, is that :

apart from the emphatic tone of a large number of prohibitive *Hadiths* on this subject, the issue is so sensitive and complex that only a judge or a jurisconsult (*mufti*) who is well-versed in theological sciences is authorised to determine what exactly amounts to disbelief.<sup>1137</sup>

## **5.2 *takfir* in the Qur'an and *Hadith*.**

The concept of *takfir* can be clearly observed in the Qur'an, and the concept is particularly clarified in *An-Nisa*, 4:94 which promotes the tolerance of all believers. The verse suggests that Muslims should be accommodating towards 'others,' and not

<sup>1134</sup> Barakat Ahmad, Syed, *Conversion from Islam*, op.cit., p14. Also see O'Sullivan, Declan, 'Egyptian Cases of Blasphemy and Apostasy against Islam: *Takfir al-Muslim*, ibid., p.112

<sup>1135</sup> Kamali, Mohammad Hashim, 1997, *Freedom of Expression in Islam*, Islamic Texts Society, Cambridge, p186. Also see O'Sullivan, Declan, ibid., p.113

<sup>1136</sup> Mawduwdi, 'Mischiefs of *Takfir*,' op.cit., no page number provided

<sup>1137</sup> Ibid., p186



base their attitude on other people with predisposed assumptions. 4:94 is quite concise with the message that if a Muslim meets a stranger who offers the believer the salutation of 'peace be with you,' then it is not to be assumed by the receiver that the person is offering anything else other than what should be perceived as friendship. The Muslim should not automatically assume that the stranger is a disbeliever, or an infidel. The verse suggests that even if the stranger was a *munaḥfiq* (hypocrite), who was just pretending to be a believer, then their salutation is still to be received as a warm welcome. Also, it declares that even if the stranger was an infidel, then the actual comments they made should be acted upon, as it is irrelevant as to whether they are a devout Muslim or not :

وَلَا تَقُولُوا لِمَنْ أَلْفَى إِلَيْكُمْ السَّلَامَ لَسْتَ مُؤْمِنًا.

Say not to those who greet you with peace (*al-salam*) : "you are not a believer." (*An-Nisa*, 4, verse 94.)<sup>1138</sup>

The Qur'an suggests that the greeting of *al-salam* is sufficient enough evidence that the receiver should simply assume that the person offering such a salutation is to be considered a believer. Therefore, there is no need for the receiver to follow any further inquisition to establish and confirm the giver's religious belief. This point is adequately explained by Colin Turner and Muhammad Baqir Behbudi, in their Shi'a translation of the Qur'an which includes, within the translation of the text, the *tafsir* (exegesis) of the text's meaning by a Shi'ite exegete. In this verse, 4:94, the principle is established that believers should remain aware when travelling, that the people they meet with should be discretely viewed upon, due for security reasons, so that the safety of the Muslim group, when en route, can be maintained, but the strangers greeting them are still to be accepted and acknowledged in return.

Thus, the verse promotes all Muslims, in their daily *jihad*, to strive towards promoting the message of God, and not try to protect their worldly goods through materialism, as was the habit in the pre-Islamic days, and they must certainly not kill those whom they meet, based on this purpose of greed. It should be clear to sincere believers that

<sup>1138</sup> Both the Arabic script and translation are from Kamali, *Freedom of Expression in Islam*, op.cit., p187. Also see O'Sullivan, Declan, 'Egyptian Cases of Blasphemy and Apostasy against Islam: *Takfir al-Muslim* op.cit., p.114



God's wealth is of greater value than money - and it is that wealth which believers must aim to obtain. One main emphasis that can be seen here is the act of killing such a person, who may be just simply perceived to be an unbeliever, is completely unlawful within Islam :

O you who believe! Whenever you travel in order to strive in God's cause, take care to investigate carefully the position of the Desert Arabs; know them and be prepared. If you meet someone on the way who greets you with the phrase 'Peace be with you!,' do not say 'You are not a believer, and you are using the phrase 'Peace be with you!,' in order to secure your lives and your possessions.' Such an attitude is symptomatic of your attraction towards the things of this world; such an attitude shows that you merely wish to slay the unfortunate wretch and make off with his possessions as spoils. If indeed this is your intention, know that in God's Presence there are 'spoils' in abundance : they are to be had through obedience to Him and through striving in His cause. Before the advent of Islam you were wont to slay each other on account of your covetousness, your desire for more wives, more children, more money, more cattle. But now God has honoured you with the bounty of belief, and thus you must not behave as of old. Thus when you meet someone on the way, investigate carefully and try to discern whether he is a believer or an unbeliever. If he is a desert-dweller who believes but does not know that migration is incumbent upon him, or if he is aware of the obligatory nature of migration but has no financial means, it is not lawful for you to spill his blood. Be careful, for God is well aware of all that you do.<sup>1139</sup>

Mawduwdi argues that 4:94 was revealed as it was "precisely the reason why Allah and His Messenger have given strict instructions to honour the bond of faith."<sup>1140</sup>

There are several relevant *ahadith* on this subject that will be useful to quote, as this principle in the Qur'an is equally established in *hadith*. All the relevant *ahadith* promote the point that consistency of acts by devout believers overcomes any need for doubt. Their manners of worship and dietary preparations, makes each person that undertakes them, to be a sincere Muslim. One *hadith*, collected by 'Abd Allah al-Khatib Al-Tabrizi in his work, *Mishkat al-Masabih*, reads as :

<sup>1139</sup> *An-Nisa*, 4, cited as verse 95, Turner, Colin P., *The Quran : A New Interpretation*, (Textual Exegesis by Muhammad Baqir Behbudi), 1997, Curzon Press, Richmond, Surrey, UK, p51. Also see O'Sullivan, Declan, *ibid*, p.1140-115

<sup>1140</sup> Mawduwdi translates 4:94 as: " 'Allah says: 'If a person, to show that he is a Muslim, presents salaam to you, do not just say to him, without investigations, Thou art not a believer,' " Mawduwdi, 'Mischiefs of *Takfir*,' *op.cit.*, no page number provided



مَنْ صَلَّى صَلَاتَنَا وَاسْتَقْبَلَ قِبْلَتَنَا وَآكَلَ ذَبِيحَتَنَا فَهُوَ  
الْمُسْلِمُ لَهُ مَا لَنَا وَعَلَيْهِ مَا عَلَيْنَا.

Whoever prays our prayer, facing the *qiblah* that we face and eats what we have slaughtered, is a Muslim. He shall have the same rights and obligations as we have.<sup>1141</sup>

This *hadith* is also in the collections of *ahadith* by both al-Bukhari and Abu Da'ud, reported by the narrator Anas ibn Malik. Both of these versions of the *hadith* describe how the Prophet Muhammad announced that the practice of expressing the *shahadah* is enough for a person be considered to be a sincere Muslim, without questioning them on this matter. The *hadith* held by Abu Da'ud reads as :

The Prophet (peace\_be\_upon\_him) said: I am commanded to fight with men till they testify that there is no god but Allah, and that Muhammad is His servant and His Apostle, face our *qiblah* (direction of prayer), eat what we slaughter, and pray like us. When they do that, their life and property are unlawful for us except what is due to them. They will have the same rights as the Muslims have, and have the same responsibilities as the Muslims have.<sup>1142</sup>

It can be clearly seen that such *hadith* promotes the strength of the Islamic community in using such an establishment of general 'unity' between believers, with the support of each other to be there. This more 'united' approach aims towards preventing believers referring to others as disbelievers, which could lead to weakening the numbers of followers in truth faith. Another theme, related through the *hadith*, questions the very legitimacy of the authority one has to ask such questions of whether another is a believer or not, if the accusations are based purely on unconfirmed suspicion or possibilities only. In the collection *Mukhtasar Sahih Muslim*, by Ibn al-Hajjaj Al-Nishapuri Muslim, one *hadith*, narrated by 'Abd Allah Ibn 'Umar specifically spells out this point :

<sup>1141</sup> Both the Arabic script and translation are from Kamali, *Freedom of Expression in Islam*, op.cit., p188. Kamali also cites the *hadith* from : Al-Tabrizi, 'Abd Allah al-Khatib, *Mishkat al-Masabih*, edited by Muhammad Nasir al-Din al-Albani, second edition, al-Maktab al-Islami, Beirut, 1399/1979, Vol.I, *hadith* no.13, (in footnote 64, ibid., p253). Also see O'Sullivan, Declan, 'Egyptian Cases of Blasphemy and Apostasy against Islam: *Takfir al-Muslim* op.cit., p.115

<sup>1142</sup> Abu Da'ud, Sulaiman bin Al-Ash'ath bin Ishaq Al-Azdi As-Sijistani, *Sunan Abu Da'ud*, 4 Volumes, edited by Muhammad Muhyi al-Din 'Abd al-Hamid, Matba'at Mustafa Muhammad, Cairo, no date or page number provided. Also see Abu Da'ud, *hadith* number 2635, narrated by Anas ibn Malik found on e:\islamica\winhadis\winhadis.tex on CD Rom *islamica : Digital Library of Islamic Software*, Islamic Computing Centre, London, [ www.ummah.org/icc ]. Also on al-Bukhari's



إِذَا قَالَ الرَّجُلُ لِإِخِيهِ يَا كَافِرٌ فَقَدْ بَاءَ بِهِ أَحَدُهُمَا فَإِنْ كَانَ  
كَمَا قَالَ وَإِلَّا رَجَعَتْ عَلَيْهِ.

When a man calls his brother a '*kafir*,' one of them is afflicted with the charge. Either it is as he says or (if the accusation is not true), it befalls the person who uttered.<sup>1143</sup>

One further *hadith*, collected by 'Abd Allah al-Khatib Al-Tabrizi found in his work, *Mishkat al-Masabih*, is narrated by Abu Dharr al-Ghaffari, and it relates the same message as a warning, that such an the accusation, if proven untrue, will come full circle back to the accuser :

مَنْ دَعَا رَجُلًا بِالْكَفْرِ أَوْ قَالَ: عَدُوَّ اللَّهِ، وَلَيْسَ كَذَلِكَ إِلَّا حَازَ  
عَلَيْهِ (أَيُّ رَجَعَ عَلَيْهِ).

Whoever charges another person with disbelief, or calls him an 'enemy of God,' while this is not so, will have the charge rebound upon himself.<sup>1144</sup>

All of these *hadith* above promote the clear message that is not confined to only prevent *takfir*, but it expands to also include any form of transgression, or sin (*fisq*) together with any false accusations that people had committed a crime. Therefore, a Muslim is prohibited from having any right to accuse upon another believer that they have committed any sin (*fisq*). Another *hadith* actually states the point, that if such accusations are made, and proven to be false, then the very sin that the person was charged with, will fall back on the shoulders of the accuser, in reciprocation for their own unfounded misdeed :

لَا يَرْمِي رَجُلٌ رَجُلًا بِالْفِسْقِ أَوْ الْكُفْرِ إِلَّا ارْتَدَّتْ عَلَيْهِ إِنْ  
لَمْ يَكُنْ صَاحِبَهُ كَذَلِكَ.

collection, Volume I, *hadith* number 387, narrated by Anas ibn Malik, also found on e:\islamica\winhadis\winhadis.tex, ibid.

<sup>1143</sup> Both the Arabic script and translation are from Kamali, *Freedom of Expression in Islam*, op.cit., p188. Kamali also cites the *hadith* from : Muslim, Ibn al-Hajjaj Al-Nishapuri, *Mukhtasar Sahih Muslim*, edited by Muhammad Nasir al-Din al-Albani, second edition, Dar al-Maktab al-Islami, Beirut, 1404/1984, *Kitab al-Imam*, Vol.I, p79, (in footnote 65, ibid., p253). Also see O'Sullivan, Declan, 'Egyptian Cases of Blasphemy and Apostasy against Islam: *Takfir al-Muslim* op.cit., p.116

<sup>1144</sup> Both the Arabic script and translation are from Kamali, *Freedom of Expression in Islam*, ibid., p188. Kamali also cites the *hadith* from : Al-Tabrizi, 'Abd Allah al-Khatib, *Mishkat al-Masabih*, op.cit., Vol.III, *hadith* number 4817, (in footnote 66, ibid., p253). Also see O'Sullivan, Declan, ibid., p.117



No man accuses another of transgression (*fīsq*) or unbelief (*kufr*) without partaking of it himself if the accused is not what the accusation claims he is.<sup>1145</sup>

Muhammad Abu Zahrah argues that, after assessing these *ahadith*, it leads to no other conclusion apart from the fact that nobody can accuse another person or group of people, that they have undertaken the acts of blasphemy, apostasy, disbelief and/or transgression without doing so with substantive, unquestionable evidence. Otherwise, anybody who makes such an accusation with no such undeniable proof, then their accusation would become focused back on them. Abu Zahrah explains it, “if the accuser is lying, he becomes a disbeliever.”<sup>1146</sup>

### **5.2.1 The Expression of *al-shahadah* and ‘*iman* (Faith).**

The Prophet Muhammad defined a person to be a Muslim by the simple clarification that the person must have sincerely announced the *shahadah*, so that they firmly believe that there is only one God (*tawhid*) and to acknowledge that the Prophet Muhammad is God’s genuine Messenger. Essentially then, “This is the only definition by which a Muslim can be judged.”<sup>1147</sup> As genuine ‘*iman*’ is an internal choice and decision in each person, this factor cannot be assessed or even identified by any other person. It is understood that when a person makes the public announcement of *al-Shahadah* this is all that is required for the person who express themselves as a devout Muslim. The announcement means that they abide by the rules of Islam, and uphold the Five Pillars of Faith, but all the other factors of how they lead their life is irrelevant to any other person. As Mawduwdi suggests :

<sup>1145</sup> Both the Arabic script and translation are from Kamali, *ibid.*, p188-189. Kamali also cites the *hadith* from : Al-Tabrizi, ‘Abd Allah al-Khatib, *Mishkat al-Masabih*, *ibid.*, Vol.III, *hadith* number 4816, (in footnote 67, *ibid.*, p253). Also see O’Sullivan, Declan, *ibid.*, p.117

<sup>1146</sup> Abu Zahrah, Muhammad, *al-Jarimah wa'l-'Uqubah fi'l-Fiqh al-Islami*, *op.cit.*, p182

<sup>1147</sup> Barakat Ahmad, Syed, *Conversion from Islam*, *op.cit.*, p14. Also see O’Sullivan, Declan, ‘Egyptian Cases of Blasphemy’, *op.cit.*, p.118



Every person who is a Muslim and believes that there is no god but Allah, it should be presumed in his favour that he has faith in his heart. If he does something which contains a semblance of *kufir*, one must believe that he did not do it with the intention of *kufir*, but merely out of ignorance and lack of understanding. Therefore one must not straightaway issue a *fatwa* (verdict) of *kufir* on hearing what he says, but must try in a goodly manner to make him see sense.<sup>1148</sup>

On a legal basis, the very fact that authentic faith is in a person's heart and cannot be criticised by any other person was emphasised by Imam Abu Hanifah declared that if the utterance overheard, or the actions perceived to be disbelief are divided as ninety-nine percent of disbelief, but still holds a mere one percent of belief (*'iman*), then it would still remain outside the category of *kufir*.<sup>1149</sup> Concerning this level of doubt, on allowing up to ninety nine reasons out of a hundred to be very questionable, but to still accept the Muslim in question as being a devout believer, remaining within the Islamic community and the Islamic Faith, Husain Ahmad Madani, a Deobandi theologian, included his position on this issue within his autobiography *Naqsh-i Hayat*. Madani states that :

All great scholars are unanimous in holding that if, out of hundred ingredients of the belief of some Muslim, ninety-nine are those of unbelief, and merely one of true Islamic faith, it is not allowed to call him *kafir*, nor does his life or property become violable. In fact, Hazrat Gangohi (a founder of Deoband religious school) clearly states in his *Anwar al-Qulub* that the saying of the jurists about ninety-nine grounds does not set a limit, and that if 999 out of a thousand points in the belief of a Muslim are unbelief (*kufir*) and only one is true belief, even then he cannot be called *kafir*.<sup>1150</sup>

One explanation of what the phrase 'one reason out of a hundred' is meant to be in reference of, could be interpreted as being the public expression of the *Kalima*, when a person declares the *Shahadah*. This, on its own, is enough evidence for other Muslims to acknowledge that the person who expressed the *Shahadah* is declaring their sincere faith in Islam. In this context, of 'one good reason in one hundred negative reasons,' to still mean that the perpetrator is to be always accepted as a Muslim, the next explanation presents the level of tolerance that Islam provides:

<sup>1148</sup> Mawduwdi is quoted by Barakat Ahmad, Syed, *Ibid.*, (no page number provided.). Also see O'Sullivan, Declan, *ibid.*, p.118

<sup>1149</sup> See Barakat Ahmad, Syed, *Ibid.*, p.186. Also see O'Sullivan, Declan, *ibid.*, p.118

<sup>1150</sup> Madani, Husain Ahmad, *Naqsh-i Hayat*, Bait-ut-Tauhid, Karachi, 1953, vol. i. p. 126, also found on <http://tariq.bitshop.com/misconceptions/fatwas/prohibition.htm> See O'Sullivan, Declan, *ibid.*, p.118



By the “one reason” out of a hundred, or a thousand, is meant the affirmation of the *Kalima* by the person concerned, while the vast majority of his beliefs may be tantamount to *kufir*.<sup>1151</sup>

In reference to this declared position, Muhammad Abu Zahrah argues that there can be mitigating circumstances surrounding such remarks or offensive expressions that can be perceived as disbelief. An example provided would be the specific situation in which the utterances were made, or where the opinion derives from, when there could be a predisposed assumption that *kufir* is in use. Concerning this perspective, it is necessary to initially assess relevant cases with a broad ‘benefit of the doubt’ technique. Some cases during the reign of the fourth Caliph, ‘Ali b. Abi Talib, involved the Kharijites. They directed accusations of disbelief towards the leading figures, that included the Prophet Muhammad’s Companions.<sup>1152</sup> However, although the Kharijites were deemed as transgressors from the true path of Islam, during no incident when they presented an opposition to Islam and Muslims, did Caliph ‘Ali b. Abi Talib declare any of them as infidel disbelievers (*kafir*). The Caliph activated the opposition of such accusations, as “he said that a person who seeks the truth but makes an error is never the same as a person who seeks falsehood, and then proceeds to commit it.”<sup>1153</sup>

This approach of ‘protection’ for devout believers, to prevent seemingly random accusations of *kufir* is also stated by Muhammad ‘Ali b. Ahmad b. Sa’id al-Zahiri Ibn Hazm. The principle of such ‘protection’ demands the acknowledgement that :

anyone who has uttered the testimonial of faith (*kalimat al-shahadah*), and declared his or her faith in the mission and guidance of the Prophet Muhammad, is a Muslim and this bond with Islam cannot be severed by allegations of any kind unless his or her disbelief is proven by indisputable evidence.<sup>1154</sup>

<sup>1151</sup> This comment is taken from what follows as an explanation of the quote cited from Husain Ahmad Madani, *Naqsh-i Hayat*, *ibid.*, found on <http://tariq.bitshop.com/misconceptions/fatwas/prohibition.htm>

<sup>1152</sup> Kamali, *op.cit.*, p186. The acts of the Kharijites in this context, are discussed above, under the concept of *bid’ah*.

<sup>1153</sup> Abu Zahrah, Muhammad, *al-Jarimah wa’l-‘Uqubah fi’l-Fiqh al-Islami*, Dar al-Fikr al-‘Arabi, Cairo, no date given, p182

<sup>1154</sup> Ibn Hazm, Muhammad ‘Ali b. Ahmad b. Sa’id al-Zahiri, *al-Fisal fi’l-Milal wa’l-Ahwa’ wa’l-Nihal*, Maktabat al-Salam al-‘Alamiyyah, no date given, Vol.III, p138. Also see O’Sullivan, Declan, ‘Egyptian Cases of Blasphemy’, *op.cit.*, p.119



Further to this principle, the point is also emphasised by Muhammad Amin Ibn ‘Abidin, who states that whether a person is born as a Muslim or converts to Islam, they are still to be held as a sincere, devout believer, indefinitely. Basing this position on the same legal fundamental factor, that genuine belief cannot be interfered with by such accusations that are formed through any doubt, this formulates the security of a person’s belief to remain there indefinitely. Accepting this firm basis, then “from this point onwards, no amount of doubt, suspicion or allegation is allowed to interfere or overrule the continued validity of a person’s faith.”<sup>1155</sup>

Both the *‘ulama* and the respected authorities of jurisprudence in the different schools of law all agree that it is not legally valid to attribute any form of disbelief based on the grounds that opinions differ. It is also not acceptable for someone to blame another of disbelief by specifically using the word *kafir*. Salim al-Bahnasawi defends this position, arguing such a word as *kafir* cannot be used by anybody in the street, “for this is a matter only for the competent judge. It is therefore impermissible for a layman to declare another as an infidel.”<sup>1156</sup> To place this position in a historic context, al-Bahnasawi cites a case that occurred during the time of the second Caliph, ‘Umar b. al-Khattab. The circumstances of the case involved :

a person known as Ibn Maz’un made a statement that wine-drinking was permissible in Islam. However, the Caliph did not declare him a *kafir*, saying that it was a matter requiring evidence and proof in order to ascertain and establish the facts of the case before a judgement was passed on it.<sup>1157</sup>

The relevant ‘evidence and proof’ that is referred to in this case, and what is required in any debate of whether a person is a *kafir* or not, is to be focused on the principle that there must be obvious and manifestly explicit evidence. Consequently, if no evidence is presented, then there is no validity in making a suggestion of possible the accused having any secret thoughts and/or feelings. Such hidden ideas can only be witnessed by God.

<sup>1155</sup> Ibn ‘Abidin, Muhammad Amin, *Hashiyat al-Radd al-Mukhtar ‘ala’l-Durr al-Mukhtar*, (often referred to as *Hashiyat Ibn ‘Abidin*), Dar al-Fikr, Cairo, 1399/1979, and the second edition, published by Matba’at al-Babi al-Halabi, 1386/1966, Vol.III, p289

<sup>1156</sup> Al-Bahnasawi, Salim, *al-Hukm wa Qadiyyat Takfir al-Muslim*, third edition, 1405/1985, Dar al-Buhuth al-‘Ilmiyyah, Kuwait, p128

<sup>1157</sup> Al-Bahnasawi, Salim, *al-Hukm wa Qadiyyat Takfir al-Muslim*, *ibid.*, p128



### 5.3 *takfir* and *ta'zir*.

As the overview of such an act of false accusations, or accusations that provide no substantive evidence, and are based merely on an individual's personal opinion, or through rumours and suspicions alone, this leads to the interesting result, with the implementation of a *ta'zir* punishment on the guilty false accuser. As Kamali elucidates, in reference to both Muhammad Amin Ibn 'Abidin, in his work *Hashiyat al-Radd al-Mukhtar 'ala'l-Durr al-Mukhtar*, (which is more generally known as *Hashiyat Ibn 'Abidin*), and also Mansur b. Yunus b. Idris Al-Buhuti, in his work *Kashshaf al-Qinna' 'an Matn al-Iqna'*, the situation is that :

*takfir* is a grave sin and an offence under Islam. Hence, anyone who accuses another of *kufir* in explicit words, or charges him with attributions that imply *kufir*, is liable to a deterrent *ta'zir* punishment which is to be determined by a competent judge.<sup>1158</sup>

As Louay Safi argues, the unacceptable act of abusing *takfir* can be linked-in with the equally unacceptable act of an illegitimate accusation on someone being a *zindiq*. Safi suggests that such accusations of either of these two 'crimes,' either that of 'unbelief' or that of 'political dissidence,' can be rather easily open to misuse, if someone undertook such a claim, as part of their desire to make a political gain. This misuse can be undertaken by inventing such controversial and polemic accusations upon a political opposition to undermine their position. Hence, Safi states that :

there is no way to ensure that *takfir* (charging one with disbelief) and *zandaqa* (charging one with heresy) claims would not become a political weapon in the hands of political groups to be used as a means to eliminate rivals and opponents. Indeed there is ample evidence to show that *zandaqa* and *takfir* have been used by the political authorities during the Umayyad and Abbasid dynasties to persecute political dissidents<sup>1159</sup>

Safi provides two examples of such cases that involved the execution of those accused as being 'political dissidents' and heretics, during the Umayyad and Abbasid political control :

<sup>1158</sup> Kamali, *ibid.*, p189. Also see Ibn 'Abidin, Muhammad Amin, *Hashiyat al-Radd al-Mukhtar 'ala'l-Durr al-Mukhtar*, (generally known as *Hashiyat Ibn 'Abidin*), Dar al-Fikr, Cairo, Egypt, 1399/1979, Vol.I, p582; and also see Al-Buhuti, Mansur b. Yunus b. Idris, *Kashshaf al-Qinna' 'an Matn al-Iqna'*, Maktabat al-Nasr al-Hadithah, Riyadh, Saudi Arabia, 1968, Vol.II, p117. Also see O'Sullivan, Declan, 'Egyptian Cases of Blasphemy', *op.cit.*, p.120

<sup>1159</sup> Safi, Louay M., 'Human Rights and Islamic Legal Reform', found on : <http://www.witness-pioneer.org/vil/Articles/shariah/human3.pdf> viewed on 6 July, 2001. Also see O'Sullivan, Declan, *ibid.*, p. 121



The execution of Ghaylan al-Dimanshqi by the order of Caliph Abdul Malik bin Marwan, and Ahmed bin Nasir by the order of Caliph al-Wathiq after being accused of heresy, are cases in point.<sup>1160</sup>

#### **5.4 Conclusion.**

The modern day opinion of how *takfir* should be dealt with within Islam was published in the very well respected Egyptian newspaper *Al-Ahram*, on December 8<sup>th</sup>, 1981, in an article by the *Mufti* of Egypt. He assessed how to treat any *takfir* from one Muslim to another believer. Salim Al-Bahnasawi cites the article, in his work *al-Hukm wa Qadiyyat Takfir al-Muslim*. The article declares that :

- (a) It is unlawful to attribute disbelief to a Muslim for a sin he might have committed, even if it be a major sin; and
- (b) Declaring someone a *kafir*, or *fasiq* may only be attempted by a learned person who specialises in the religious sciences (*'ulum al-din*).<sup>1161</sup>

When researching an assessment on the legal positions held on this topic for the appropriate sentencing provided by the different schools of law, one finds that it covers a vast complexity of ideas, together with the complicated diversity of different legal rulings put forward by jurists and theologians. Thus, due to these many different levels of statements made on the topic, Muhammad Abu Zahrah argues that it would aid the decision making process of legal sentencing in such cases of apostasy and/or blasphemy, if a separate judicial position was created to fit in between the existing judiciary positions in the present legal system. The new role would be undertaken by a lawyer :

with specialised jurisdiction to adjudicate issues pertaining to apostasy, blasphemy and disbelief. The court so created would be entrusted with the task, *inter alia*, of determining exactly what utterances and conduct amount to disbelief, blasphemy, or apostasy as the case may be. The individual must, therefore, try to avoid passing hasty judgements in matters involving the attribution of disbelief to others.<sup>1162</sup>

Another positive element of the new legal post to be held with this very specialised role, would mean that should a devout believer genuinely feel that another is very

<sup>1160</sup> Safi, Louay, Ibid, in footnote 45.

<sup>1161</sup> Al-Bahnasawi, Salim, *al-Hukm wa Qadiyyat Takfir al-Muslim*, third edition, Dar al-Buhuth al-'Ilmiyyah, 1405/1985, p376. Also see Kamali, *ibid.*, p189. For the quote from the *Al-Ahram* newspaper article, see Kamali, *ibid.*, p189. Also see O'Sullivan, Declan, 'Egyptian Cases of Blasphemy', *op.cit.*, p. 121

<sup>1162</sup> Abu Zahrah, Muhammad, *al-Jarimah wa'l-'Uqubah fi'l-Fiqh al-Islami*, *op.cit.*, p176. Also see O'Sullivan, Declan, *ibid.*, p.122



probably undertaking the acts that could be categorised as being some form of intentional disbelief, heresy, or even apostasy, then the position of the sympathetic accuser would be having the ability “to give him (i.e. the accused) good advice in the true spirit of the Qur’anic principle *hisbah*.”<sup>1163</sup> Therefore, anybody who is in full knowledge of having witnessed the deliberate acts of heresy or disbelief, and that has also the sound, unquestionable evidence to prove such an accusation, then the duty of the *hisbah* principle would have been met once the evidence was presented to the competent authorities who can take on the case of full investigation. As Salim Al-Bahnasawi sufficiently encompasses this condition and the circumstances they should be presented in, with his comment that :

No one may be subjected to adversity and harm on the basis of a mere suspicion or allegation of disbelief, blasphemy or apostasy without the necessary proof and adjudication of competent authorities.<sup>1164</sup>




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<sup>1163</sup> Kamali, *ibid.*, p189.

<sup>1164</sup> Al-Bahnasawi, Salim, *al-Hukm wa Qadiyyat Takfir al-Muslim*, op.cit., p148.  
Also see Kamali, *ibid.*, p189.